Rutland County Court.

March Term, 1885.

STATE OF VERMONT.

RUTLAND RAILROAD COMPANY

against

JOHN B. PAGE.

Statement by Defendant; Arguments of Messrs. Walker and Burnett for the Defence; Charge of His Honor Judge Veazey; Verdict of the Jury; Papers relating to the case, being a reply to a Report issued in 1884 by a Committee of the Directors to the Stockholders.

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RUTLAND, June 15, 1885.

To the Stockholders of the Rutland Railroad Company.

For the purpose of presenting to you, from my standpoint, the facts in the case which was recently tried against me at your expense, and as alleged in your behalf, I have caused to be printed the annexed papers, which explain themselves. I do this because of the general circulation which has been given to a pamphlet prepared under the authority of your present Directors, containing many statements and comments respecting my management as one of the former Trustees and as President of your Company, which have been found by a jury to be *untrue*. As you can readily understand, in addition to the serious injury suffered, and great expense incurred by me arising from the charges made, which were the foundation of this protracted trial, I have a strong feeling of personal wrong sustained in consequence thereof. My defence is now laid before you. Lest my action should be misunderstood I add that I am not a candidate for election as a Director, and could not now accept that position if it were offered.

JOHN B. PAGE.

ARGUMENT BY ALDACE F. WALKER.

GENTLEMEN OF THE JURY:

I have not committed any speech to memory or learned any poetry to amuse you by its recitation. I propose to talk to you in a quiet and straightforward way about facts in issue in this case, according to my best judgment and belief. I do not think it necessary to enlarge upon the benefits and province of a jury trial as plaintiff's counsel have done. We have this case here for trial by jury. It would not have been here for this mode of trial but for our client. I do not feel called upon to discuss the scope of the action of assumpsit or whether it is as broad and all-pervading "as the providence of God." The court will tell you this is not an action of account, but is a case in which the plaintiff must prove that the defendant is indebted.

I have a right to complain of what I consider wrong in the methods of trial and argument which have been adopted in this case. The methods of both trial and argument have, as it seems to me, been unprecedented. The trial as conducted by the plaintiff seems to have aimed to present proof directly contrary to what the fact is claimed to be. Page after page of this record has been read in your hearing precisely contrary to what they want you to believe, and which shows, if it shows anything, a state of facts directly opposite to what the party reading it, claims to be true. This method of argument does not tend to develop truth and is not fair. Again, why do my friends take up a piece of testimony and read to where they come to what is against them and then stop reading. Why do they wrest the testimony from its obvious meaning? They come to the trial and undertake to get the facts of the case from the defendant by putting him upon the stand and taking his disclosure, and they get mad at him and abuse him because he does not testify as they expected.

Again, why were we treated to this peroration of half an hour about the alleged "disguised" handwriting upon the face of Acceptance 178, when upon the very face of it stands "J. M. Haven, per P." Why did Mr. Ballard stand for an hour and reiterate and restate and review those acceptances that were burned up? These were certain acceptances that did not cost the Railroad Co. anything, and which Gov. Page paid from his own funds. They are paraded before you, not because they are of any importance in this case, but because it is thought they may make an impression upon some weak mind. This matter is brought in here for a purpose entirely foreign to the rights of these parties.

Mr. Ballard saw fit to adopt in his opening of the case a theory that the President had full power to control the Treasurer in all things, and that the Treasurer was merely his servant. He read from the by-laws this extract: "The Treasurer shall deposit all funds of the corporation as di-

rected by the Board of Directors, and in case of want of instruction by the Board, shall obey the instructions of the President in reference thereto, and generally shall perform such duties as may be assigned to him by the President or the Board of Directors." This by-law relates particularly to what bank the Treasurer shall deposit his money in. Was the use made of that by-law by the counsel honest? What do they mean by spending an hour and a half expatiating upon that by-law, in connection with the claim that the deposit which was erased on the pass-book was made up to deceive Wilbur? This could not have taken place, and everybody knows that it did not take place as stated by Mr. Haven. What do you think of these subjects and the purpose for which they were introduced in the argument?

The plaintiff began this trial by calling an expert, and still Mr Ballard goes on characterizing expert testimony in a manner designed to prejudice your minds against it. Mr. McLaughlin was called and examined day after day on matters relevant to the case and matters irrelevant to the case, and they read page after page from his precious pamphlet, and when they get through with him, and we upon cross-examination show the baseless fabric of his whole structure, and that the theory of his testimony is without foundation, they lose confidence in expert testimony and do not try it any more, except as they put Mr. Yalden on, and disclose by him that he knows nothing or next to nothing about these accounts. Yes, they depreciate expert testimony, but they keep their experts at work day after day and night after night, and at last bring in here voluminous statements after the testimony is all closed and when no opportunity exists to examine witnesses and show by proof their fallacy! They ask you to overthrow the sworn evidence of reliable gentlemen, accountants of experience and honor, by a statement not verified by the oath of any person whatever, and a statement too, that has been modified $20,000 since the adjournment for dinner to day.

Mr. Ballard says, what evidence is there that Mr. Haven carried away a single paper or document of his office? There is evidence that Mr. Haven has carried away at least one paper that belongs to the Company, and that evidence is in the handwriting of Mr. Barrett, upon a paper put in evidence, upon which Mr. Barrett endorsed, "returned Nov. 1883;" and when I inquired of Mr. Haven, if he had not carried away anything more, the four counsel upon the other side jumped up and spread their skirts over the witness, and we were kept out of the answer to my inquiry.

Mr. Haven drew checks for his private purposes; this Mr. Ballard says was wrong, but as an offset to it, he says Gov. Page did the same thing. That may be so, but there is no proof of it in this case that I remember.

The history of this transaction is before you. You will remember that in 1864 Gov. Page became one of the Trustees of the Rutland and Burlington Railroad, upon the resignation of Gov. Stewart. It was an administrative trust, equivalent to a receivership, and large burdens were placed upon the Trustees, to manage a complicated business, ramifying into other matters and connections, so that large experience and financial ability were required in the management. The parties interested in this property were in a state of war and discord

at that time, and there was a great litigation then pending about the title to the property itself. The question in that case involved the whole property, and its decision might not only wipe out the value of all the stock, but all securities after the first mortgage. These Trustees were in possession under the second mortgage, and they struggled on in hope to make such a success in the business as to pay off the first mortgage, and save a few shillings to the second. The duty incumbent upon and undertaken by these Trustees was an active one—to do whatever might be done for the interest of the second-mortgage bondholders, that they might realize something upon their investments. This trust was under the direction of the Ellis J. Loring decree, and the crisis was one that required active work. The policy adopted was a daring one, but it was successful. The road was without connections at either end; and, besides the Valley connections at the lower end, required an outlet to the north. The Central Vermont was hostile; somebody went over the Lake, and acquired the Montreal and Plattsburg Railroad and another, which, with the steamboat Oakes Ames, gave an outlet to Montreal. This made this a sort of trunk line, complete in the summer season, but in the winter the frost closed the Lake, and Gov. Page projected and built the Addison road; he had also to buy up the Smalley mortgage to protect the property and its terminal points. Somebody had to take risks and stand behind the adventure. The bondholders stood in the background, waiting for their dividends and their coupons,but were not ready to advance a dollar, and left the entire burden of the work upon the shoulders of the Trustees; but Gov. Page was equal to the emergency, and instead of a worthless local line, there became a through line, complete and with the power of competition, as against all comers. The bondholders were in position to receive something upon their debt. No party for which Gov. Page was acting was at any care or at any risk. The papers and records in this case will show the work he had to do and the way he accomplished it, and the result to the trust which he represented. He took the risk, and the owners of the property derived the benefit.

There was finally a foreclosure of that first mortgage, with interest included at seven per cent, and it became necessary that something should be done to prevent the entire property passing upon the decree. The foresight of somebody had organized this Rutland Railroad Company with a plan for the issue of preferred stock to be used in taking up the first-mortgage bonds and of common stock for the second-mortgage bondholders, but there was a great work to be done. The first-mortgage bondholders must be made to believe that they could exchange their bonds, included in their decree of foreclosure, for this preferred stock, and the second bondholders, that they ought to exchange theirs for the common stock of the new corporation. Some would not take it, and there was no market-value to any of these stocks; and that was the shape the thing was in for three long years. But when that negotiation had been carried to a successful issue, a lease was made to the Vermont Central and the Vermont and Canada Railroad, a lease which, if carried out, would have made the transaction one of the most successful business transactions ever known in New England. Now, complaint is made that

large expenditures were made in building up this corporation, and bringing it to the point to where $560,000 was coming into the treasury every year from these rents. It was necessary in conducting this business that it should not be known what the ulterior purpose was, and Gov. Page in using his best judgment and skill in this business had to act secretly and keep his own counsel. Complaint is made by some of those who had not known what was being done, of the cost and the expense with which this result had been worked out, and they cannot see why there should be a debt; no one before this suit was brought had claimed that there was improper expenditures, but simply that they did not know of the debt,—and that came only from two men, Mr. Barnard and Mr. Chase. Mr. Chase had procured himself to be appointed President *pro tem* of this road during the absence of the President of the Company, and by his indiscretion nearly brought it to ruin, until Gov. Page, being called hastily from abroad, gathered up the pieces as best he could, and carried it along with success to the end of his administration. Gov. Page is not like other men; he is always willing to assume a burden and responsibility for the general good; to assume any burden and put his own shoulders under the load. He is not a sneak. He is cool and reticent in conducting business affairs. No business can succeed except with him who keeps his month shut. There is nothing so dangerous to the affairs of a delicate business, where speculation is interested and securities are being looked after, as to have the affairs of that business paraded about on the street; and it required in the conducting of the business which Gov. Page had in hand that he should be discreet, and that the secrets of the business should not get into the hands of those who would bring destruction upon the very matters that it was for their interest to protect. There is nothing so delicate as these public securities which are dealt in on the market, and in which many people take a daily interest. It required constant effort to protect the rights of those who could not protect themselves; and when Gov. Page was gone to Europe and Chase was President *pro tem*, this road was nearly wrecked for the want of discretion in the management,—that discretion which Gov. Page of all other men has exercised, and through which and his business sagacity and judgment this property has been saved to those who now control and manage it.

During the second absence of Gov. Page in Europe, those left in charge of the management adopted the plan of issuing scrip in payment of dividends, and the plan was matured before he got home and had been put upon the records of the company, and yet, the issuing of these scrip dividends is one of the things that is now complained of against Gov. Page, and it is sought to place him under liability to this corporation on account of transactions in this scrip dividend.

When this property was under stress, eight-per-cent bonds had been issued to take up its floating debt and keep it from insolvency; the road got into a controversy with the Central, and Gov. Page went to New York and bought Central stock, and in that way got such a control and advantage that he carried that lease another year and saved more than $250,000 in money for this corporation.

Then came on the war, and, after making a good fight in favor of the Rutland Company, it turned out adverse to our side, and the rents had to be cut down, and in the settlement of that suit and in an attempt to save what could be saved, the Central Company bought back all the stock and gave its notes for it, which are the Central notes that have figured so largely in this case. It was not possible to make the Central carry out this contract, and as the best thing to be done a new contract was made by which the rents were reduced, and instead of $560,000 per year it had to take up with $258,000, if I have got the figures right; and out of this the road had to pay its fixed charges—an annual payment of interest and rents which were more than its yearly income. That is not a very happy situation, not a very desirable state of affairs. If a man's income is $15 per year and his expenses $17 he is certainly running behind, and ruin will overtake him sooner or later, and something must be done, especially if he has behind him a large clientage of bondholders and stockholders looking to him for relief. What was to be done? He could go on making an increasing debt or must devise other means. The preferred stock was then worth four cents on a dollar and the common stock was not worth looking after. It was a crisis that had to be met. If the income could not be increased, the outgoes must be decreased. The road was insolvent and a receivership was impending. The only course was to reduce expenses, and the manly course was to go to the creditors and make them see that if they required their full pound of flesh it would possibly involve the entire loss of their securities. There were rents to be paid, and that the parties might be induced to reduce them to conform to the situation, Gov. Page in behalf of the Rutland Corporation went to buying up their stocks for the purpose of having the influence needed to secure a reduction. He succeeded in forcing a reduction of the Addison rent from seven per cent to three per cent upon its cost. The next thing done in the scheme to reduce expenses was to get up the equipment bonds and make a new mortgage to secure that indebtedness, and put the interest at five per cent; after this, the next thing done was to go to the first-mortgage bondholders and ask them to go in and help in efforts to save the company and its property, and to that end to take a less rate of interest so as to be in harmony with the situation; and after a while they were made amenable to reason and the first mortgage stood at six per cent instead of eight per cent—thus saving $30,000 per year.

Another subject for a whine here is that of salaries. In all this business Gov. Page's salary was something less than an average of $4000 per year. A petty sum for the valuable services rendered. Another difficulty was that there were some who became obstreperous and wanted their money, and would not take anything but their dues by the strict rules of the contract; and among them was Mr. Chaffee who brought a suit against the Company which has been much talked about in this suit, and finally recovered a judgment of $25,000; in that suit Chaffee attached all the income of the Company, which raised another difficulty for Gov. Page in his management of this business. It became necessary to protect this income or the business must stop, and orders were given for the rents. It was necessary also that these orders should be upon

a consideration to save them from being attached, and the orders were discounted and held by parties who had paid full value for them. The Finance Committee was organized and the Directors voted that they should have charge of the business and finances of the Company; that they might keep records, and set upon their own adjournments; and they did keep records of their proceedings which have been put into this case and to some extent read to you.

The Smith bonds were another danger that had to be met. These were a few of those old first-mortgage bonds of the Rutland & Burlington R. R. that had not been taken up or exchanged into preferred stock. These bonds could not be found when the others were converted. They were sued and a decree obtained; and Gov. Page, Mr. Williams, and and Mr. Hickok again came to the front and raised the money to pay them off. But this decree made a foreclosure against other dangers and they kept it on foot to enable them to use it as a shield in case of other attacks.

Then there is a man by the name of Brooks, in Boston, who has figured a good deal in Vermont railroad litigation. He had $70,000 of these bonds. It was necessary to get his bonds, and Governor Page did it and bought them below par. The Company was not in condition to make the purchase, but Governor Page made it and saved $19,000 by the operation to the Company. The Company had no money with which to make this purchase, and Governor Page gave his own notes and carried them year after year, and yet afterwards when he got into a tight place and thought the Company ought to return this favor by loaning him its credit for a little while, a credit which it would not have had except for the services and management of Governor Page, its Board of Directors thought they ought to do it for Governor Page. We think this corporation owed this at least to its President under the circumstances. If he had done as Chase did, and charged a commission upon all the paper he indorsed at the time he was only asking the use of the credit of the corporation for a few days, he would have been entitled to $130,000 in cash from its treasury. Is not Governor Page entitled to consideration as against stockholders who buy in after the work is all done, and pick up the antediluvian threads of its past management to weave a net about him.

It is claimed that in 1879 and 1880 this road had money to spare; but instead of that, it had a floating debt of more than $300,000. Its income had to be used in paying off its debts. A time was reached when its acceptances should have been retired, but it was not in fact done, and this was not the fault of Governor Page. He thought the income of the company should be applied first to the payment of its debts, but the preferred stockholders wanted dividends. A stock-paying dividend is worth something to sell in the market. The stockholders did not know of the Chaffee suit and the other incumbrances, and they were greedy for dividends, and were not willing to wait until a clear result was reached. This was nothing that Governor Page got any benefit from, but it all went to the benefit of the stockholders of the corporation, and beyond the dividends the stockholders received further benefits from

the stock going up on the market and they got its enbanced value in the increased price of their stock, and Governor Page who had built this corporation up from bankruptcy was receiving the enormous salary of $1500 a year from the treasury.

This was too good for his kind neighbors to let him enjoy. We do not complain but what the Clement board had the right to buy stock, and to turn out the old management, but they did not bave the right to use their position for revenging grievances of a personal nature. Tbey did not have the right to collect false evidence and publish it to the world, and thereby ruin others in their credit while they shut their eyes to the actual facts. They had no right to hide the crime which had been committed by one official and seek to throw the responsibility of it upon another wbo was innocent. They had no right to bring this suit at the expense of the stockholders of whom they were Trustees. The parties who brought this suit have nothing to lose; the corporation pays the expenses—that corporation which, but for the management and policy and the credit of Governor Page would not now be solvent or able to pay those expenses. They employ and bring into the case counsel and experts, not for the good of the corporation, for they say that they cannot recover anything from Governor Page, even if they could get a judgment against him. I do not need to inquire as to the motives for this suit; I leave that to you. We have a man who says he is poor in purse and broken in spirit. He has been broken by personal antagonism. He is no unknown man, but one that has been known in the State, in the town, and in the county—always favorably known in every good work. He is pursued by malice, and there is no malice like that that is born of injury done; an injury received can be got over, but an injury done burns forever in the after-life of him who has injured his neighbor.

This case was brought and has been tried by one man, and would not have been tried at all but for bim. He has sat here day after day suggesting every question and laying his lawyers and witnesses under tbe lash. It is said the Directors of the corporation autborized this suit, and some of them have been brought here to testify to matters wholly immaterial. Mr. Ball has been here, Mr. Sargent, Mr. Barnard, and Mr. Wells, and testified to their little word and left tbe court-house not to return. Mr. Smalley was here one day, and the first day of tbe trial Governor Stewart came, and may have been in the court-room once since, but these Directors apparently take little interest in tbis suit.

You have seen Mr. Clement as he sat here, when his witness McLaughlin was on the stand, and I hope some of you saw his face and the look with which he regarded his witness who was under his pay. You recollect when this trial commenced how Mr. Ballard told you tbat the plaintiff wanted the bottom facts, that they were going to probe the whole thing, going to call Mr. Haven to the stand and let him tell bis story, but not going to defend him; and you have watched the proceedings and seen how they have sought to reach the bottom facts. They commenced by asking question after question that could only be of use in engendering prejudice, and when we objected, tbey said: "We will

connect it so as to show you how the Company's money got into the hands of Governor Page."

They assumed at the very start that the fight was between Haven and Page, and when we put questions that tended to show the true state of affairs four stalwart counsel hovered him. I said in the heat of debate that they covered him with the petticoats of the Railroad Company, and it was not a bad figure either. My friends have an inducement for keeping this trial going, they are sure of their pay; with us the case is different, they spend four weeks trying to make Governor Page swear to details of facts a little different than he did the day before; this was perhaps fun for them, but it was not fun for him; no verdict that you can give him will indemnify him for the results of this disgraceful trial.

The bill of particulars that was filed in this case upon our demand contained twenty-seven items, covering twenty years of Governor Page's life—a busy life full of important incidents, and such as no man could carry in his memory. Witnesses are dead, and records gone, and yet he is called upon to answer as to the doings of many years, involving an amount of money of over $1,000,000 embraced in these claims. They talk about whether Governor Page had an honest claim. Is *this* claim an honest claim? This matter is more than dollars to Governor Page, and in meeting it he has more feeling than the money involved. It has been the cause of breaking down his credit here and in the cities where his business generally was. Nineteen out of the twenty-seven items have been struck out, taking out more than $697,000 of the claim. What does this mean? It means that in these nineteen claims that are struck out there is nothing that ought to have been presented in court. Weeks have been spent in the matters growing out of the steamboat business, the Smalley mortgage, and others. When Governor Page failed of a re-election in 1883, he went to the new Board of Directors and said: "If you want to know anything about the past history of this company, I am ready to give you all the information in my power." But this was declined. They got Mr. Haven's help and sat down in the office and went to work. That was before this suit was started. When did the claim upon which this suit is based, first have its birth? We tried to prove how their claim was first raised and whether they then acted like honest men, but objection was made and the door was shut.

When Governor Page found that the committee appointed by the Board of Directors had made a report, he wrote a letter to the President of the Company, saying [Reads part of the letter]. They say that Governor Page would not explain when he was asked to state what his claim was to the Board of Directors, but that he only asked for the appointment of a Board of Arbitrators. He did apply for an adjustment of his claim and for arbitrators, and repeated his application as soon as he knew that they denied the justice of his claim and made one of their own.

Instead of going to him and asking for a settlement, or writing a letter that they found he was indebted to the Company and wanted settlement, they printed it in a newspaper. Was that an indication of an honest claim? What sort of color does that give? It was when this statement was published that Governor Page wrote his letter to the

President in which he renewed his offer to submit to arbitration. They have read the answer to that letter. The offer was declined and the Company took its own course. This suit was not brought in good faith. There was no demand, no attempt to settle, every offer of settlement was repudiated, and a suit brought for $1,100,000. This cannot be the way men treat an honest claim, but shows the marks of ulterior motives and we cannot shut our eyes to it, gentlemen of the jury.

Now I say, after all this, the conduct of Governor Page has been exemplary. He has been quiet, modest, and unassuming. He has sought to get before this jury all that he can do or say to assist you in finding the exact truth.

There were many items ruled out by the court, and there was no reason for us to give proof as to them. Governor Page was very anxious to go on and call up all that had been alleged against him, but we overruled him and have tried to confine our evidence to the case, and were obliged to let the rest go.

I am now going to discuss the few items that remain in the case.

Adjourned to May 6, 9 A.M.

WEDNESDAY, May 6.

Now gentlemen of the jury, we will go right to business.

The first item that is left open in this case is the one that is known as Item 2. In respect to that, it is stated in the specifications as the amount of alleged credit balance to the lessees of the Vermont Valley Railroad, transferred to the Rutland Railroad Company from the Rutland & Burlington Trustees. In the settlement of the matters of these Trustees there was $31,000; which was divided between the five parties who had taken the lease, and was rightfully received by them, as I shall show you. The claim of the plaintiff upon that is for the part of it that Governor Page received for his share. That was paid to Governor Page in July, 1871. Now they seek to have him pay it back after the Company had paid it to him as his just due. This $6000 was his share of the profits of the Valley lease for the period of five years, a profit that was not only the result of five years of hard work and management, but full of risk; if there had been an accident that had cost the lessees many thousand dollars, the trust would not have paid it, but they must put their hands in their own pocket and make it good. Now the basis of the claim is that the Trustees of the Rutland & Burlington Railroad Company had no right to engage in this business for themselves and thereby make a profit in connection with the business of the trust. Whether that was right or not depends upon various things. In the first place, upon the situation of the case and its relation to the other matters. You must remember that this Valley Railroad and the Rutland Railroad were independent concerns, and no one will pretend that being a trustee prevents a man from going into business for himself. He can do anything that will not endanger or conflict with his trust business. This Valley lease was largely for the benefit of his trust business as they said, and he did it to help the trust along. Of course it would not occur to you that on that ground there could be any recovery. The ground of claim is, I

think I can state it correctly, that in the management of this lease the business was all done through the general office of the Railroad at Rutland, and the office and books of the trust were kept here, and that the business was in fact so connected with the trust that it was a part of that business. I understand that to be the claim upon which this claim is allowed to be alleged here.

Now assuming that is so, the questions with reference to whether or not it can be recovered in this form of action, have been ruled upon as matters of law, and the situation stands, as it seems to me, very much as would be explained in an illustration I will give. Supposing one of you is made trustee of a farm for some person who lives out of the State, and you take possession of this farm and run it. Now you find that there is an adjoining farm which is situated in such a way as to be of great value to the farm you are running; you find you could run both with the same men and teams, and there are rights of way going over that farm that you should have, and so you go to your man, and say: "Why not lease this other farm? We can work both to better advantage; why not take it and lease it?" "No," he says, "I wont do it. If you want to you must do it at your own risk. You know it is better to do so, and you go on and take that lease yourself; you keep an exact account of your hired men and teams, and the thing runs along five or six years and no complaint is made, and you go on and make up an account and it appears that the profits on each are so much; your friend says, all right, I will take the whole of it, you have no business to operate in that way, you are trustee.

Now in view of that illustration the court has said that the questions to be submitted to you are:

1. Were the profits of the Valley lease included in the accounting to the court in 1871.

2. If not, were the lessees to have the profits by arrangment understandingly entered into in advance.

3. If not, was the settlement and payment to them ratified?

If you understand these questions, you will see that if you answer any one of them in the affirmative, your verdict will be for the defendant.

Were the lessees to have these profits by an arrangement entered into in advance? On that there is only one line of evidence to be considered, and that is the fact that he and Mr. Birchard saw the importance of having this right of way over the Valley road and desired to take it in as part of the trust property, and made an application to the parties representing the first mortgage, to be allowed to take it into the trust, and it was refused. They being satisfied of the benefit to be derived therefrom, went on and made the arrangements themselves as individuals. Upon that proof you cannot fail to find that it was an individual arrangement from that date. The risk they were assuming in connection with the matter was large. It is not true to say that all the expenses of the matter have been paid by the trust. It does not appear that the trust paid anything. The expenses have been paid out of the earnings of the Valley road. The account was kept in the books

of the trustees at Rutland, and separate accounts kept of its income and expenses, and all charges in that business were paid out of the income credited to that enterprise.

At the time the settlement was made by the Board of Directors a single item was released. It was agreed between the parties that the Rutland road had got a quid pro quo for the matters released. If the Trustees got their pay that is all there is of it, and it appears by the report made to and accepted by the Rutland Company, that they did, in full, and it is conceded that the facts in that report were true, so that it is not true to say that any of the expenses of the Valley road were paid by the trust.

Now these profits stood here upon the books of the Trustees. Suppose for example there had been a tremendous accident. Does anybody suppose the trust would have been called upon to pay damages belonging to that Valley business? Supposing the earnings were not sufficient to pay the rent. The lesses had assumed the risk of it and they had put up a hundred thousand dollars U. S. bonds as security for the payment of this rent, and so it is proved clearly in the way the business was carried on that the matter was understood to be an individual matter. The account was kept in that way. The other parties had an opportunity to take it but declined. The Valley road paid its own bills and it was an advantage to the trust property, and the whole affair redounded exceedingly to the advantage of the trust. It might have been better to take it into the trust at the outset, but they did not. So that first question, as it seems to me, must be answered in the affirmative. That the lessees were to have the profits by an arrangement entered into in advance.

Were the profits of the Valley lease included in the accounting to the Court? If as we claim and will hope to demonstrate, those profits were included in the accounting to the Court, it is not now open.

Now upon that subject I have once more to complain of the unfairness of my friends in their argument. You have had this sheet shown before you, and the argument has been attempted to be drawn therefrom; that these erasures on the blank of "Valley Road" etc. was a taking out from the accounting of those leased lines as the matters were made up and presented to the Court. But, as you know, the blank used for this was taken from the requisition book. The fact of these lines being crossed off has no relevancy. It is a mere pretence to say they have anything to do with the question whether or not they were passed upon by the Court. They might just as well have taken any other blank in the office and put upon it the accounts they had in mind, or ruled up a sheet of blank paper for that purpose. Now what were the facts as to whether or not these items were included. [Journal entries here read and explained.] This item led up to this balance, and therefore it was included. That is what Governor Page and Mr. McNair both say.

The third question is whether or not the settlement and payment of these profits were ratified afterwards. There is evidence from which you can find that this settlement was ratified after the adjustment had been made. You will find at the end of the business of the first year of the Railroad Company the certificate of the Auditing Committee, which in-

cludes the very vouchers which had been passed in on this payment, so that by the parties appointed to audit the accounts of the company this very item has been approved and ratified. I think that I called your attention to the fact that in 1872 there was an Auditing Committee appointed by the stockholders at a regular meeting, and they came up here by special vote of the stockholders to make the examination, and they examined all the books and papers, and made their full report to the Company that all the debts existing against the Company ought to be paid, as shown by the account. That Committee saw the balance-sheet, and they made no question about this item. They don't say, here is six thousand dollars that ought to be paid back by Governor Page. They say, "We have got to meet the debt, and it is all right." And I say the stockholders or their own Committee have looked the matter over and have made a certificate that they made an examination and found the balance, together with all vouchers, to be correct. That includes the balance as it stood at the time, after making this payment. That is the end of the question of ratification. It was ratified, and I do not need to say anything about acquiescence implied by lapse of time. One would ordinarily suppose it had been relegated to oblivion. My argument is directed to show that every one of these questions on that item must fairly be answered in the affirmative.

The next item is what is known as the Whitney item, being the difference between $82,000 of preferred stock and eight hundred and twenty shares of common, claimed as wrongfully paid James S. Whitney.

The first question that arises upon that is whether or not it was wrongfully paid to him. Of course if it was rightfully paid, that is an end of the question. We say it was rightfully paid, because he had got the company by the throat, and they could not get away from it; and we say in view of the proof the settlement was a desirable settlement to be made. He was entitled to the cash, and the settlement left him with preferred stock in the place of the money he could have got upon his bonds. In point of fact, General Whitney made a large discount from the cash value of his claim, and they would have had a right to pay the whole amount of his claim any day in order to get rid of the danger that was threatening.

You remember what the facts are, I hope. The first mortgage had been paid off except about $70,000, the second mortgage except about $73,000, mostly held by General Whitney, and Mr. Whitney comes and says, "My claim is good; I want my whole rights; I want my pay in full."

Now, in connection with this assertion of his claim of right under his mortgage bonds, he filed a motion in court designed to prevent the passing of these accounts. This Trustee's management must be settled and adjusted so as to be able to complete the lease to the Central. The whole thing depended upon that. The settlement was made with Whitney, and the ordinary order made confirming and allowing the accounts as passed by the Master. The grounds of opposition to the account do not appear, and the purpose Mr. Whitney had in the matter does not appear; but we may assume the purpose was to oppose the granting of a final decree in the matter until he should be able to perfect his plans and

arrangements in reference to this screw he was putting on the corporation. At any rate, it does not appear that he questioned any of these items in the settlement. It does not appear that if the account had been gone over to any extent Governor Page would have suffered. They say it was a transaction entirely for the benefit of Governor Page by buying off the opposition of General Whitney to the settlement of the Trustee's accounts, and not a matter which went to the benefit of the road; but when you come to the proof it was all the other way. The proof is, it was made while Governor Page was in Europe, for the purpose of getting rid of General Whitney's claim on these bonds, and preventing his collecting his bonds in money.

Now you will find that Governor Page did not control that negotiation, that that negotiation was not made to secure the co-operation of Mr. Whitney as to the settlement of Trustee's account, but it was made in order to get Mr. Whitney's bonds out of the way, and if they had not done it the whole thing was blocked and the property ruined by the inability of the management to make the leases contemplated. It is a mere supposition that somebody is trying to do something wrong, that leads certain people to give false color to a transaction, which was necessary for the life of the Company.

Another item which my friends have still retained to themselves, and which remains in the case, is known as the Addison dividend item. Now they seem to think there is a tremendous mare's nest there. The claim on which they stand is this: The amount of dividends for five years not received by the Rutland Railroad Company on three hundred shares of Addison stock, once owned by the Rutland Railroad Company, and which were sold to one Hickok by Governor Page, the proceeds of which were irregularly paid to said Page, and never paid over to said Company, and which was bought back of said Hickok in August 1883, unbeknown to the Railroad Company, and restored to it upon the books of the Addison Company; and the plaintiff claims to recover said dividends of Governor Page as an incident to the stock he so restored. They claim to recover of Governor Page dividends on Hickok's stock; money that Page never had; money that Page never saw the color of. The dividends were drawn by Mr. Hickok directly from the treasury. The drafts have been put in evidence. It does not appear that Governor Page had anything to do with it whatever; but it does appear that Hickok owned the stock during those four years. Now the ground of their claim is that they think that Governor Page did not pay over what he got for the proceeds of the stock. They show that Page received $12,000 from Hickok when he sold the stock, and that the money belonged to the Company, and that Page did not pay that $12,000 over to the Company, therefore they ought to have those dividends. What they ought to have, if Page got this money and didn't pay it over, is the interest on the money. If he had the money that he received for the sale of the stock, and didn't pay it over and finally made it good, of course he ought to pay interest on the money during the time it lay in his hands. That is the only claim they can make as it now stands. The trouble is that the interest on the money is only $720 a year while

the dividends amounted to $900 a year, so they don't feel satisfied with the interest and think they ought to have the larger sum. And you can see at a glance that if Governor Page had the money he is accountable for interest on it, and if he paid over the principal when he received it, he ought not to pay the interest. Now that is their theory of the transaction and it seems that when we get there we have got to all that ought to be said about the item. We will take this a little farther, however, because we have got an affirmative claim in this cause. You will remember the way in which this matter was attacked by the bellicose counsel who undertook to prove his theory of these various items. He called Governor Page's attention to this matter, and because Page undertook to say that this stock was lying in Mr. Hickok's hands as collateral for a loan, and that an arrangement had been made in reference to a sale, he was stopped and was not permitted to proceed, and then the question was put to him, "Did you sell this stock?" And Governor Page said, "If you want a categorical answer, I did not sell the stock." And everybody saw how foolish Mr. Barrett had been, because he did not sell this stock, but the Company sold it. And then the matter was further illustrated by our friends in the same direction. Governor Page told it just as it was exactly, and after he got all through Mr. Barrett said, "You may go on and tell your story if you want to; but he said, "I will stop there."

Now when we came to inquire about this matter on our side of the case, we looked it over and asked two questions. We asked Governor Page—Did you have any of these Addison dividends? and he said I did not. And, if you had any thing to do with the paying of those dividends? and he said I did not. Now we have got a right to take the whole testimony as it came in here and see what the story is as we can infer it from the proofs as they stand. And the transaction, as it seems to me, as fairly made out is simply this: I want to refer to a suggestion that Mr. Hickok is not here. The question is whether Governor Page accounted to the Company for the money which Mr. Hickok paid him. That is a question Mr. Hickok can know nothing whatever about. He bought the stock and paid for it and afterwards sold it back. Those facts are in the case. It was perfectly useless to bring Mr. Hickok here because he knew nothing of the proceeds, or what became of them. Now the proof as I understand it is this: Mr. Hickok, who is a gentleman if he is Governor Page's relative, is not quick to make up his mind, and he wants time to think and takes a good deal sometimes, but a gentleman of great honor and integrity. Mr. Hickok had in charge the negotiations which resulted in the reduction of the rent on the Addison road, whereby that rent was reduced to $15,000 a year; and in the course of that transaction he bought a large amount of stock and loaned money, and there was an item of three hundred shares of that stock which he was holding in his hands as collateral security for money which he had advanced to the Company. The title to this stock was never made to the Rutland Company until this final transfer back. It stood in the name of Henry P. Hickok as Mr. McLaughlin says, since 1877, if I understood correctly. Mr. Hickok held the custody of the certificate, and held it as collateral security for

what the Company owed him. He made up his mind, that at the selling price, he would like to own the stock, and makes a negotiation with the President in which his services are taken into account, and he agrees to buy this stock and gives his note for it. That is the proof. Now that was apparently in 1877 or 1878. The proof is that in January, 1879, Governor Page holding this note of Mr. Hickok borrows from Mr. Williams, of Bellows Falls, $12,000, or obtains that sum from him personally some way or other, not in connection with the railroad money, which he deposits in the Bank of Redemption at Boston, and that deposit upon the adjustment with Haven was $12,150 which Governor Page tells you was the deposit of the money for the Addison stock sold. The proof farther is, that the following September, these gentlemen being together and settling up perhaps this and other matters, this memorandum is given showing what has been done: This certifies that the Rutland Railroad Company has received of James W. Hickok $12,000 in payment of 300 shares of Addison stock held by him as collateral. That does not say when the Rutland Railroad Company has received the money on this; it does not say that they had received this money from Mr. Hickok; it does not say in what way the money has been settled for upon his note which had been given by Hickok to Page; it does not say it was settled at that time. There has been an effort made to show that, but the proof does not show that the items were the same. But it may have been that at that time Governor Page settled with Mr. Hickok as to that stock that had previously been sold. As to that question the fact remains that on January 29th, previous, Governor Page had raised from his own funds, as we claim, through Mr. Williams, to put into the treasury of the Company $12,150, for or on account of the purchase of this stock. That is the fact as it stands upon the proof, and that item of $12,150 is not accounted for in this case unless that application is made of it. Mr. Haven gives Page credit for it in Ex. "A." Mr. Haven tells you he did not know that stock had been sold to Mr. Hickok. Why did he pay dividends on it if he did know it was sold? How does it happen that that collateral receipt was taken up? This $12,000 not entered in the cash, and not credited to the stock, is $12,000 to Mr. Haven's good in his account, and Governor Page furnished the money. The Governor has explained this item and you believe him; when a man has scraped down to the very last $30 I think you can believe what he says.

Now I want you to understand one thing as to that $12,150. Mr. Haven testifies that he understood it to be a payment by Mr. Page on private account, and he gave him credit for it on his sheet Ex. "A.," knowing at the time it was Mr. Page's private money, because if it was not he could not have given him credit, and could not have said it was a payment by Governor Page. Now we are entitled either to that $12,150 which Mr. Page paid in from his private funds on that day or we are entitled to this $12,000 with which Mr. Page bought back the Addison stock in 1883. He put it in and intended it to apply on that, and we are entitled to have what he paid for the Addison stock unless he is allowed this credit. If we are not entitled to this $12,000 which we claim in 1883,

then we *are* entitled to $12,150 with interest on it from January, 1879, and that would be more to our advantage because we should get the interest; but Mr. Page did not put it in because he says the facts were the other way. The account may have been stated like this: If any one of you are bookkeepers you will see—Credit Governor Page $12,150 paid in for the Addison stock January 29, 1879; debit him with the payment of the Hickok notes when he got the money in September, 1879; and credit him with the amount which he paid afterwards to buy in the stock. He is entitled to one or the other, this $12,150 or the $12,000 he paid summer before last, and we do not care which, only, according to the facts we think we have stated it honestly. Now there has been a vast deal of time wasted here to show that Mr. Hickok made an alteration in the book. Governor Page made the transfer and paid the money as of a certain date, and Mr. Hickok went and changed that date, but nobody knows why, and we don't care why. I think I could explain it, but as it is a matter as far distant from the transaction in this case as Plattsburg is from Rutland, I am not going to try to do it. It don't make any difference to this case whether Governor Page dated it back on the transfer book, or what his reasons were. No question is made as to the payment of the money. The proof is, however, that the stock was in his hands long before the election and the transaction substantially completed before that time, if not actually entered up upon the books. In fact the proof is that it was entered upon the books in July and Mr. Hickok changed it to August 7th. So much for the Addison stock item, and this view which we have adopted seems honest. I might allude to one famous point that Brother Ballard made in his argument—that Mr. Williams had not heard of it. Mr. Williams did not become a Director until 1881. He confused this Mr. Williams with his father who was a Director earlier.

The next item which is under consideration is the item of profits on dividend scrip, amounting to $3,752.25, without counting interest on the money which he invested, and including dividends on his own stock. Governor Page's testimony goes to show that his total profit was $3,752.25 and no more. Now, this scrip was bought, as Governor Page testifies,—most of it in 1872—when it was worth about as much as the bonds were worth that it was converted into, and on that purchase the average was about the same as though he bought the bonds in market, and on the purchase of scrip in the latter years there was this amount of profit and no more; and, as I say, that includes the conversion of his own dividends, but does not charge up interest on his investment from the date it was made. Now, I suppose, I shall have to explain this scrip to you. The Rutland Railroad Company had outstanding at that time about $4,000,000 preferred stock. It had no money to pay dividends with, and they borrowed money to pay dividends, which accounted largely for the debt they then had on hand, and they did not want to go on and borrow money any more for that purpose. Therefore, while Governor Page was in Europe, and at a meeting before he returned, a vote was passed, on the motion of Mr. Whitney, that provided that the Company should issue, instead of borrowing money, this scrip, which was an agree-

ment to pay the dividends at some future time, with the right of converting it into the bonds of the Company. As I said, the record shows that at this meeting on the 30th of January, 1872, Governor Page, President, being absent, it was resolved that the Directors be authorized and empowered to issue to the stockholders the dividend 3½ per cent scrip of the Company convertible into bonds, etc. Now, that plan was inaugurated by the stockholders themselves,—General Whitney was not a Director at that time,—and they all participated in it, and took the benefit of it when the time came around. It was not Governor Page's device, and he is not to be held responsible, but to be treated as the other stockholders are treated. If they do not treat him as they treat themselves, then it is a fraud upon him, and a corporation can commit a fraud as well as an individual. The Company was not in condition to buy its scrip for cash, but when they could Governor Page bought it for them. He paid out $5000, money of his own, buying scrip for the corporation, but turned it over to the Company. When the Company was in a pinch and had not money to take up their liabilities, he used his own means to buy up this scrip, and he was entitled to just the same as any other stockholder was entitled to. Now, you bear in mind, this is not his suit brought against the Company to compel them to pay the scrip to him; if it was, there might be some defence conceived of. But if they want the money which he has realized for the scrip, they have got to give him back his scrip, and they cannot come here now and seek to make him disgorge any of this money without the rest of them doing the same thing. This is a suit of the stockholders; they have had the same thing, and for them now to turn around and say to Governor Page, "We will keep all we have got, but you must pay back what you have got," is a fraud on the part of the corporation. And, further than that, I claim—

Judge Veazey—Perhaps it will relieve the counsel to say that the court will hold in this case that it is too late to question the legality of that proceeding in this suit. I thought I would hear the claims, and then make up my mind what I thought to be a proper claim about it. The legality of it it is too late to question now.

Colonel Walker—That leaves it where I don't care to further discuss that question.

The next item is said to be the amount going to the benefit of said Page as an individual, while he was President of the Rutland Railroad Company, out of said Company's funds, in the matter of the settlement of the Collamore and Simpson suits.

The amount going to said Page as an individual out of the Company's funds. Now, you have not heard our statement of that transaction, except as developed by the questions put to witnesses and their answers. And that is an item upon which the court will submit to you a question, and therefore I must state to you our claim.

The effort of the plaintiff has been to throw the suspicion around this transaction that it consisted in the settlement of some suits brought against Page and Chase by Collamore and Simpson, and that the Company paid $19,000 to Simpson and Collamore in settlement of these suits which Simpson and Collamore had brought against Page and Chase. If

that was the whole transaction there might be a question perhaps as to the propriety of it; but the fact is, that was not the whole transaction, but it was only the very epidermis of it, and the whole transaction stood written right out on the book itself, and on the papers on file in the office in reference to the transaction. And I say. my friends knew it was not a correct account of the transaction; they knew it was a purchase of bonds, and they knew these bonds were purchased by the Company at just exactly what they cost the President of the road, and not a cent more. But I think—I may be wrong—I think this claim is one that, with the facts as they existed, ought never to have been put upon paper. In the first place, the amount is stated wrongly. It is stated at $19,330, and on the next following page of the journal, credit is given for $4000, which should come out of the $19,000, because the Company only had to pay the $15,000. Now, here was this man, Mr. Chase, with his own bitter grievances against Governor Page, which he had written down in a book, and committed to memory besides, with $147,000 of his first-mortgage bonds, and this corporation in which he feels so much interest was in distress. The vessel was stranded on the shore, and Governor Page was trying to work it to sea. Mr. Chase goes to work and finds some other people—one or two others—and they get together and say, we will make up a pool on this matter, and bring this corporation into court, and let these Vermont people know that a first-mortgage bond means something. And so when the Governor tried to persuade them that eight-per-cent interest was more than their money was worth, and that they had better go into the scheme with the other bondholders to reduce it to six per cent, Mr. Chase stood on his dignity, and said they owed the coupons, and they had better pay them. So he sent up to his attorney, Mr. Hard, and brought a suit, and in the next six months another, and in another six months another. There was not the slightest defence, and they went to judgment, and the thing was beginning to stagger. There were three or four other people watching to see how the cat was going to jump, and, of course, it was not going to be a just thing for part of the bondholders to be paid eight and part six per cent. The amount of bonds Mr. Chase represented, was a large amount, and Judge Prout took hold of the matter, and they had some correspondence; and finally Judge Prout starts for Boston and undertakes to see what can be done; and this Collamore suit is pending, in which Mr. Chase is defendant, and everyone knew that Mr. Chase was in some apprehension about that suit, and Governor Page was not in any apprehension whatever; and Judge Prout goes to the lawyers and talks the matter over, and the next morning Judge Prout meets Mr. Chase, and says to him practically this: "If those suits can be settled will you be willing to sell your bonds at par?" and he says:

"I made a proposition to Mr. Russell which involved a settlement of the Collamore suits. Mr. Bryant had charge more particularly of the settlement of the Simpson suits. And Mr. Russell told me to call in again and he would send out for his associate counsel, Mr. Dabney, and they said they would arrange for me to meet Mr. Chase the next morning at Mr. Russell's office. I went in and found Mr. Chase there; found

him at the table, and he was figuring with his pencil. And the proposition was accepted and incorporated in this contract for the sale of the bonds to me, and as shown by that paper. And that paper shows all about it except as to the understanding that there was to be a settlement of those suits.

Q. Settlement of what suits?

A. The Collamore suits and the Simpson suits.

Q. Was Mr. Chase a party to that understanding?

A. Mr. Chase was there in the office when the proposition was accepted. And Mr. Chase has stated the facts substantially as they were and as I understand them."

Mr. Chase says the same thing. [Reads.]

Q. "Now I want right there—You said that Judge Prout did say that the suits would be settled if you would sell your bonds. Do you remember what reply you made to that or to that branch of it as to the settlement of the suit?

A. I told him I was not going to have anything to do with the settlement of the suit myself; that I was perfectly willing to sell my bonds.

Q. That was your language to him?

A. That was it; my lawyers took the ground.

Q. I don't care what ground they took, but what you said to him?

A. That is my remembrance of it. I subsequently consented to the settlement of the suit, and signed such consent."

Now then and there they sat down and made up a contract, having come to that agreement that if he would sell his bonds at par and take seven per cent interest on back coupons, the Collamore and Simpson suits should be settled; and they draw up this paper. [Reads contract.] Of course the "other considerations" named in this contract were the agreement to settle the Collamore and Simpson suits. And that having been done, on the same day or the next Governor Page goes to work and finds Mr. Simpson's lawyers and Mr. Collamore's lawyers and makes an agreement with them whereby he buys of them the stock upon which they were making their claim, not at what it cost them, but something less than they paid, but more than the actual value, and it was this amount of $19,330 in all, over the market price. Now that being done, Mr. Page having paid that money to them or at least given his pledge for it, and having acquired that stock, then the matter is laid before the Directors and a resolution drafted by Judge Prout was passed to take these bonds and stock, and pay what Governor Page had paid, and a statement of the facts was written by one of the lawyers in Boston and endorsed by Judge Prout as true, and was laid before the Board of Directors as explaining the whole matter. That meeting occurred immediately after the transaction, April 13, 1881. In fact there is no question but what the whole circumstances were laid before the Board. In effect the proposition of Governor Page was this: I paid this money to Messrs. Simpson and Collamore and bought their stock, the payment was part of the money I had to pay in acquiring Mr. Chase's bonds and I thus obtained the option to take the bonds at par. It

cost me so much and I could not get it without paying for it ; I will let you have it at what it cost me, and they jumped at the chance, and well they might, because it was a saving to the corporation. If those bonds had been allowed to run out according to their terms, the $147,000 in all, would have shown a difference of two per cent every year agaiust the Company, and the transaction therfore was a very great advantage to the corporation, instead of a transactien where money was taken from the treasury for Governor Page. He used these suits for the pnrpose of getting in those bonds and saving the money to the Company, and turns the property over at just what it cost. Of course if they could have got the bonds at that price before, they would not have hesitated about taking them, because they went into the Columbian Bank and sold them out at par. The account shows they were sold above par after being stamped down.

Now, gentlemen of the jury, I have gone over all these items except the item which has reference to the deficiency, and upon that I shall shall spend the remaining part of the forenoon. I am very sorry to have to weary you by this long examination of these matters, and the only excuse I have is that I didn't bring the suit, but have to follow where others lead. We now come to the consideration of the live issue in this case, and that is this deficiency, and whether Governor Page is responsible for it, as they claim in their statement of claim. Their statement of claim presents the charge in this way : Amount of proceeds wrongfully appropriated by said Page while President of the Rutland Railroad Company, of its notes and acceptances. That is the way in which they charge this deficiency, and on those notes you have heard a good deal of testimony ; you will hear no more, because the parties are no longer at issue upon these specific items. The question has resolved itself into this : whether in the handling of the funds of the Company by Governor Page, as Chairman of the Finance Committee, which was a rightful handling, not a wrongful one, they are able to trace any sum of money remaining in his hands.

Now this deficiency is all there is in question as far as this claim goes. You heard the testimony which was deduced by the plaintiff's examination of our experts, and you are some of you bookkeepers enough to understand the situation, and that is this : that the corporation cannot lose money that it never had ; that the money which the corporation had, and which was entered on this journal from day to day as it was received, being accounted for, the Company is not out anything ; they cannot lose anything they never had. As the books stand, leaving aside the false entries, there cannot be any possible claim against either Mr. Page or Mr. Haven for anything except the amount of that deficiency which the books show, because all the receipts and disbursements are accounted for up to that sum ; so that as the books stand, one or the other of those gentlemen must be found responsible for that deficiency. And that is what is left of the plaintiff's case. We say it is in Haven's hands ; they say it is not in Haven's hands. Now, where is that money ? Where is it gone to ? I want you to notice first, gentlemem, that this is an action for onr adversaries to prove. They have got to make out that

this deficiency went into the hands of Governor Page and staid there. This is not an action of acconnt, as we claim the law to be, where a man is required to account for money he has had of another. They have chosen their action, it is an action of assnmpsit, where they have got to prove Governor Page promised to pay them certain sums of money, and they must prove not only that Governor Page got it but keeps it yet, and I think you will see that this claim is a fair one. We claim that where an officer of the corporation receives money and takes it to Boston or New York or any where else to use it in the business of the corporation, and comes back, and a suit is bronght against him for the money so taken, the presnmption of law is that he has used it honestly. The law don't presume the man had committed a crime. The presnmption is that where fnnds have been paid into the hands of a man as President, or as an officer, when the records are missing and it is gone, and the proof is absent, the presumption is that he did the thing right. It is a fair presumption, and one that I think will commend itself to every man's mind. I want you to tie up to this idea, that they mnst show that the fnnds went iuto the hands of the President and did not come out. And to do this they must forget not only the presnmption of honesty and right dealing, they must forget the presumption arising from Mr. Haven's evidence, that he charges to himself the very funds. He tells yon that he and Cash are the same on those books, and he tells you in so many words that he held himself responsible for the balance of cash on those books, whatever it might be ; that the balance called for at any time, he is to produce. Every entry on them is in his handwriting, and on these books you find the very entries, figures, and details which amount to a charge against Mr. Haven of a deficiency of $42,000. Now, I don't want yon to misunderstand this, and I don't think yon do. It is possible a little explanation may make the matter clear. You will bear in mind how this deficiency came to appear on the books. You will bear in mind the balance ou this page brought over from February, 1883, of over $18,000 was the amount Mr. Haven then charges himself with, and was the amount Mr. Wilbur said he found accounted for by cash and cash items. The next item is March 31, 1883, and that is a charge of rent, $21,500. The next item is under date of April 30, from there down this page, down this next page to the final balance, which is brought over at the top of the third page, the entries were in his own (Mr. Haven's) handwriting, aud done after Mr. McLaughlin got here in the middle of May, three or four weeks after Mr. Haven's resignation as Treasurer. And those entries pnt on there by Mr. Haven bring out a differeuce of $45,000—$5,000 was found in cash in the Bank of Rntlaud, leaving $40,000 short. That is where the deficiency arises on the books. Now, as I said, this first item on the first page, balance from February, was certified to by Mr. Wilbur as being correct ; the next item of March 31, nobody knows when it was pnt on the books ; it may have been at the time the other items were, but supposing it was on March 31, and was there at the time Mr. Mead says he had that interview with Governor Page. Governor Page has produced his testimony, and the books are all in the case, which show conclusively, without a shadow of doubt, that

the rent received for the month of January was all deposited in the National Bank of Rutland the day after it was received; that the rent for the month of February was deposited in the Bank of Rutland the day it was received; that the rent for the month of March was deposited in the Bank of Rutland the day it was received; so that Governor Page knew that that rent item had been deposited in the bank account credited to the Railroad Company the day he got it. But my friends would have you believe he knew the deficiency was on the books at the time. Nothing stood on the books but this item of $18,000, vouched by Mr. Wilbur, and possibly the $21,500, which was deposited in bank the day he got it. How did he know there was a deficiency until it was written up by Mr. Haven and brought out in figures that cannot lie, against him? But they say Mr. Page deceived Mr. Wilbur in reaching that result as to the correctness of the $18,000 item. The consideration of that subject will be given in its order at a later time. I will talk now about the books as relating to Mr. Haven's cash, and I say that deficiency is chargeable to Mr. Haven just as much as though he had signed his name to a note of hand because it stands in his own handwriting.

Mr. Haven stands here before you an object of pity. I never had a more disagreeable duty in my life than to ask those questions I was obliged to put to Mr. Haven which proved him a defaulter. I am only going to state facts, and you are the ones to draw inference. I confess it was a tremendous surprise to me that he was allowed to take the witness-stand here, especially in view of the significant question put to him: "Mr. Haven, you are under indictment. Are you willing to waive your privilege and testify in regard to matters in this case?" "Oh, yes." "Have you ever received any promise of immunity from prosecution by the plaintiffs in this case if you would go on the stand and give your testimony here?" And he answered that question that he had not. But when I asked him whether he had ever received any promise of immunity from any one else, then I was met by objections, and the fact was kept out. I am criticising the fairness of counsel who bring about the results here, and I say the counsel over and over again have imposed upon the court, and put the court in a false position. As to this matter, I do not know whether it is right for me to state what took place in open court here after you were discharged last Thursday; as it was not given in evidence before you, perhaps it is not. But my comment is this upon the evidence given in court before you: That Mr. Haven, having taken the stand, giving pledge to you under the solemnity of the oath, that he would not refuse to answer to matters relating to this suit, notwithstanding the accusation of his crime against him, his counsel were not justified in shielding him as they have from giving testimony in relation to paying dividends on over-issued stock, on the ground that it might criminate him. That it might tend to criminate him is the ground on which he claimed the privilege, notwithstanding he had sworn he would not take it. We insisted that after what had taken place he must testify fully, but our friends were sustained in the claim that he had a right to take back his oath.

Now, you remember that I told you in the beginning that Mr.

Haven was not a fool. I guess you agree with me now. I think that proposition has been made good. He is a very acute man, and a quick man, a very competent man in certain directions, but I doubt his honesty. He is the kind of a man that when he sees himself wrecked, wants to pull somebody else down with him. The idea that he acted under domination has gone where the woodbine twineth. You see from his appearance he is able to take care of himself and to stand up to Governor Page. He kept his own books and made his own entries. He tells you that he was not obliged to make a single entry in those books by the orders of Governor Page, and that he thought all the entries there made were true at the time he made them, and that Governor Page simply gave him facts from which he formed his own entries ; and again he says that Governor Page never interfered with the ordinary transactions from day to day. He was master as far as those books are concerned ; and whenever Governor Page came to tell him about a transaction, he sat down and made entries in accordance with the information, and that is all Mr. Page had to do with the books, except one item, one of $19,462, which Mr. Haven said he accounted for to the satisfaction of these gentlemen who were appointed to audit the accounts. And the plaintiff comes in and says it is an unexplained outgo of cash, and all Mr. Haven says is that he made it by the order of Governor Page ; and if he did so, it was to his benefit in the cash. If there was any such money actually paid out, the account represents a true transaction, and it went to the benefit of Mr. Haven in the account, as it should. If that transaction was not a veritable transaction, then the entry accounts for so much cash that remained in Haven's hands, and he got the money. Mr. McLaughlin says that he finds nothing to connect Governor Page with any part of this cash. If they had not interposed their objection, the basis of the entry would have been made to appear, and you would have seen just what it was and the purpose of it.

Now, Governor Page in the management of this business, I submit, did no more than any officer ought to do. It was his duty to take care of the Company's business, and to do it in such a way as to promote the interest of the stockholders. He had to be vigilant, careful, and keep his own counsel. The burden was upon him, and he bore it in this active care of the business, and he not only took care of the every-day business, but once, twice, thrice, saved the Company from ruin. Of course the details of the matters, the work in the office, and the manual work would be left with the subordinate officer to take care of. The man who plans and directs cannot do all the work with his own hands, and Mr. Haven was selected as Treasurer on account of the belief in his capacity and honesty.

Mr. Haven has two or three characteristics which may throw some light on the cloud. You observe from his demeanor that he is a very vain man. He is a competent bookkeeper, and nobody can teach him anything about it. I will tell you where his vanity was touched in this matter, and where he first, as it seems to me, was led into some ill-feeling with Governor Page. It seems to me Mr. Haven's feeling was that he wished to become a Director of this corporation and not confined to

mere clerical work, and he says that Governor Page had secrets from him. It was his duty to have. There were many difficult and delicate transactions where it was his right to keep it from his own right hand. Mr. Haven is a very secretive man and is unwilling to give facts here upon the witness stand. It "might have been this," or it "might have been that." He has been giving false leads all the time to my friends on the other side, and they are responsible for their blunders from the fact that they have relied upon him, instead of the evidence of the books and papers in their own office, for the facts. Mr. Haven is a very cunning man. He thinks he is cunning. You saw him on the stand when he thought he made a good point; you saw him wink at his counsel; you saw him leer when he thought there was something smart being said; you saw him making this preposterous claim, through Yalden, and his clerk, of having used his own money to the amount of $68,000 to pay Rutland Railroad Company coupons.

In respect to this deficiency the question is, and that is all there is in issue, "Who has got it, Mr. Page or Mr. Haven?" And that is a question to which we have addressed ourselves in the months that are gone. We have obtained a copy of all the checks and notes, and memoranda of all payments for bonds, and payments of all kinds as far as could be ascertained (we did not get the letter books), we got copies of the stub-books and bank-books. We have tried to find out whether this deficiency is not in the hands of Joel M. Haven, and this is the theory upon which we worked: To take the cash that is coming into the treasury from day to day as cash, rent receipts, loan receipts, bond sale receipts, and all other receipts, and to find out in the first place how that cash was used. We traced large amounts of it to the use of Joel M. Haven personally. He used it in various ways, some for his own bank account, some to buy bonds, some to buy furniture and supplies for his hotel. We found out in the first place how much he used personally, and on the other side how much of his personal moneys he has paid out for the Railroad Company, and the difference between those sums shows how much more he has used of the railroad money than he has paid back, if the work is correctly and honestly done. It shows on the one side every dollar we can find that Mr. Haven has had of Railroad moneys, and on the other side every dollar we can find that he has returned to the Railroad, and the difference is the amount left in his hands. This hasn't anything to do with his journal or deficiency as shown by the books; nothing in reaching the balance that the Company's Journal shows to be gone; but is an independent line of investigation in reference to the cash. It should demonstrate in the end where the deficiency was. The investigation was upon a line totally foreign to what could be derived from the books, and would show just what Mr. Haven had, notwithstanding his method of keeping his books. Take the cash, see how much Haven had, how much he paid back, and that shows how much he had left; and it has worked to a charm. It has completely ended this branch of the case. Haven has been taking Railroad funds during all these years. Our account begins in 1874. During that time Mr. Haven has been taking these Railroad funds—trust funds as they have been called. Mr. Haven used this Rail-

road bank account for the purpose of running his funds through it, and running out more than went in. He knew how to keep accounts, and didn't keep any between himself and the Railroad bank account, upon the obvious ground that he held himself responsible for the balance. In that he was right. That is the only theory upon which he kept his account. That basis he took for dishonest purposes, but when applied it becomes the test of responsibility. Perhaps he did not know how far he had got along, and believed that the Governor had this money—but I will give you proof that will disabuse your minds of any such theory as that. Supposing that Mr. Haven had kept his money out of these Railroad accounts, had not paid any of his money in and had not drawn his checks against it, would not the Railroad Company have been a hundred thousand dollars better off now than they are to-day in cash? Now he began this thing, as far as we can see, by running the school-teachers money through this account, and on the building of this church he deposited the money in this same account, and he paid all these things off with Railroad checks and made deposits against them. What was the object in doing that? He had an individual bank account of his own; what was his object in running that thing into the Railroad account? That is not the only way in which he absorbed the Railroad moneys, he got everything all mixed up in that way. He told the Governor it was all right. But that is not the only way, he went at it in another form, and used to take Railroad assets, and instead of putting them in the Railroad books he put them somewhere else. He had a private account in the Rutland County National Bank in which he placed a large amount of items. There are those $1500 Ranlett checks. He had $34,000 in about three years; $34,000 rent items from the Central Vermont Railroad which came to him as Treasurer, and instead of putting them into the Railroad bank account he put them into his own. What motive was there in doing that? Before I get through you will see. These matters will throw a good deal of light on this transaction. A good many other items went into that account. Some checks were given to him in payment of railroad moneys. Pickering & Moseley bond moneys, and others. He did not deny any of them. Now how does this thing look after hearing Mr. Haven's testimony. My friends were going to puncture this bubble. They put him on the stand and then follow him by another gentleman from England. How does this stand? I will go over it very slowly, because Mr. Baldwin's statement is just as true now as it was when it was put in. He has given a list of dates, amounts, etc. Mr. Haven has gone over this carefully, and has been at work for a year in the same line. We find in the first place that he had taken $34,000 Central Vermont rent money. Well what next? Here is a lot of rent items from small tenants, the total amount is $9516.03. He is asked, "Do you admit having those moneys?" "I admit all but one, on Mansfield & Stimson; I am charged with $53 too much. We charge him with the sum that is charged on his own journal and not a dollar more. The next item is requisitions overpaid—where he paid railroad requisitions in connection with bills of his own, $1140. Here we find three items that he claimed were mistakes. In the first place $300 which was charged up

to the Vermont and Massachusetts Railroad Company which Mr. Baldwin could have no possible knowledge of. The next $15 for coupons, and the next item an error of forty cents. The next item is this Brandon check; you remember I could not make him admit he had it. He got his books and I showed him the account and items: "Oh, it might have been something else." We knew he had it because Mr. Fields' statement shows Briggs' draft deposited on this same day. There was no doubt he had it, so we charged it to to him. He then comes in and says he paid another matter with his own check. We think probably he did pay that $5000 by his own check. He had a right to bring in an offset. The next item here—all the rest of the items I think, without exception, he gives us. Deposit for bonds sold Conant & Taylor, $1321.92, deposit in private account; check, J. B. Page, $2099; another check, J. B. Page, $5000—"Yes, I scooped that"—another check Pickering & Moseley—dividends on over-issued stock, as per McLaughlin and Wilbur, $6831—"That I won't answer about, I won't tell any facts about it; but I scooped it." Received of Mr. Mandigo one thousand dollars—"Yes, scooped that;" $10,000 five per cent bonds, bought at fifty per cent—"Yes, you may charge me with that." All the rest he yields. Now as to that last item, I want to say a single word because they claim that he should be credited $5000 for these bonds as entered upon the Company's book. In point of fact if he is going to be credited with that for bonds brought back, he should be charged with them when they went out. These bonds Governor Page found in the Eagle Bank, he had them sent up here, and Mr. Haven took them from the express office. They were in the Eagle Bank for years. We are stating the account at the time of his resignation, and not what was got out of him after that time.

The only other item that remains in all this matter here, is this acceptance, No. 1172, which we charge him with because it stood on his own book, in his own handwriting, "discounted for me" two months or more after the date of the acceptance. "Well," he comes and says, "that was usual, when I procured the discount for myself as Treasurer." That is the only entry of the kind in the whole book. He says, "discounted for me," meant for "me" in my representative capacity. I asked him if that wasn't true of the rest, and he couldn't say. Mr. Haven said the Railroad Company had the proceeds. How? They paid another acceptance or note to the order of Mr. Hickok or a note signed by Hickok, that the Railroad Company was holden for. "Well, produce the note." And they trotted out the note, and it showed on its face that it was paid at least three weeks before this note was discounted, and proved Mr. Haven to have misrepresented as to the fact. Well, he couldn't quite face the music on that, after he had sworn positively that was the note; just as soon as he saw the pencil marks on the back, his face fell. But he has had several days to find out, and he promised to look and find out if he could where he paid that money. I don't know but what the counsel are going to try and dig something up yet.

Now the rest of the business on this sheet made up by Mr. Baldwin consists of checks drawn by Mr. Haven on this bank account; the names are given, and the names of the banks on which they are drawn, and

there is a thousand and fourteen of them—$250,000 or so, in all, covering all of his business from the purchase of the Bates House to the presents to his family, charities, etc. Now, what does he say as to those checks? Does he come here and say those are not so? Well, hardly. Does he come and undertake to make a true statement, showing what moneys he has had out of the Railroad Company? No, he doesn't do that. We have proved—well, we haven't got the whole of those checks. We have left out item after item, because we thought there was doubt about it. Does he come and undertake to show just what the matters are? No; he comes and out of a list of over a thousand checks he picks out about two on a page, which he says are for "coupons." If they are for coupons, Mr. Baldwin is not to blame for not finding out that fact. It was Mr. Haven's duty to so note it on his book, and when the item "coupon" is omitted Mr. Baldwin has a right to assume it was for something else.

Now these checks—I have gone over the testimony of Mr. Haven in respect to that, with considerable care. He claimed out of $252,000 worth of checks which Mr. Baldwin charged him with, $24,000 were erroneous. There is his sheet. That is the difference between Mr. Haven and Mr. Baldwin. Mr. Baldwin admitted $20,000 were doubtful; Mr. Haven claimed $24,000. Does not this speak volumes for the work that has been done? Doesn't it show you that our gentlemen have been at work fairly, and knew what they were about when they made up this statement? And of all these items Mr. Haven claims, not any of them Mr. Baldwin could have known in advance; and there are a good many Mr. Haven has no right to claim. A good many of them are his personal taxes. He has no right to claim that carpet item. He says his duty was to make vouchers, and if he bought a railroad carpet he has got the bill. There are various other of these items which he has no right whatever to claim; but without taking time to make the details, it only takes off $4000 of Mr. Baldwin's checks. When Mr. Haven claims this item of $4085.53, does he tell you what that is for? It is an immense sum. He knows what it was for, but says, "I cannot find out, but think it must have been paid to Mr. Harris, because there is another one six days after that I know was to Mr. Harris." I mention that, because it is the largest one there is. Now, so much for the checks.

In the course of this investigation there has one or two other things turned up. It turns up that Mr. Haven at a certain time sent a certain lot of bonds down to Boston; $32,500 of bonds, which were sold for a certain sum of money, and part of that money he put in his pocket; and that the Railroad Company got only $30,000 out of the sale, leaving $2500 that were unaccounted for. We ask him, "Where did those bonds go to?" "I don't know." "Will you look it up and see?" "I will." And there the thing is left.

We look a little further, and find another thing that turns up. This has been a case of surprises, and in looking them up we have simply tried to find facts, and in respect to our claim and ground of claim as between this corporation and Mr. Haven, the situation has varied from time to time. We faced him when on the stand the last time with $10,000 Railroad

moneys that went to pay for the Bates House, and what is his explanation about that? If you have got memories that reach into the future you can read his explanation; if for the past only, you cannot. We find further that he claims credit for paying $10,000 for a certain acceptance —156 at the Faneuil Hall National Bank—and we find further that he had the money on that acceptance when it was discounted, and we produce the certificate that shows it. What is his explanation of that? Well, it follows in the same way. Here is the certificate of deposit. Foot it all up then, and where do we stand? As he leaves it he had $320,508.56, and Mr. Baldwin claimed $316,850.81. The result is he has got $3000 more against him than we charge him with. I won't take time to weary you with details any further, but I am going to call your attention to one or two suggestive matters arising from the nature of these checks. As I said, I think they throw a very strong light on this case. We find about thirty checks in 1874, '75, '76, and '79 to Hubbard Brothers & Co., to the amount of $5355.36, and he admits all we found. On the next page, J. Pickering & Moseley, 1875, '76, and '77, amounting to $34,690.62, all which he admits. On the next page about fifteen to W. U. Lawson, same years, $11,641.22. We find certain cashiers' checks with which he bought drafts to the amount of five thousand and odd dollars, and the total amount is fifty-five thousand odd dollars, and the whole amount was used in buying scrip and converting it into bonds. This is his way of carrying on and doing business. Governor Page bought scrip with his own money; their witness bought it with the Company's money.

Now, during these same years Mr. Haven paid in return to the Company certain moneys, and we made a little statement which shows just how it stands, giving him credit for all he claimed to have so returned during these years, not for all he claims to have returned, but for all he did return. We find that in 1874 he got out $19,836 more than he paid back; we find in 1875, $3711; in 1876 we find he got out $15,947.19 more than he paid back, etc.; making in the aggregate $39,394.19, —which he had used in three years, 1874, '75, and '76,—of the railroad funds, chiefly for buying scrip. And he comes here and says, "My scrip transactions were very profitable. I made $47,000 out of it." Whom does that money belong to? The result of these sheets shows that he was behind about $40,000 down to 1876, and from 1876 down to 1880 he was behind more. It increased a little every year, but not much. The question is, Did he know it? Did Mr. Haven know at that time that he was behind in cash $40,000? Mr. Haven is not a fool. Mr. Haven, under date of June 19, 1876, when he was behind $40,000, wrote up his books for the annual audit, and here is his way of doing it. Under date of June 30 appears in the first item, cash to bills payable, a certain amount; the next item is interest account; the next item is sundries to cash for the following payments—and there he puts in the bills payable that had been paid up to that time under date of June 30, 1876; then he goes on with the other entries for the month until he gets (this is the annual settling time for the year)—over two or three pages, until he gets down to the foot. June 30, bills payable to cash the following payments: Nos. 412 and 443, and another one at Redemption, and another at Eagle,

$20,000; and there had not one of these acceptance being paid. That entry was a lie! He supposed that those notes would get around and be paid in the next month, and he would have them to show to the auditors when they came about the 1st of August. And those notes did not fall due until the following month, and had not been paid at that time, nor out of those moneys that those entries were accounting for, and it was $20,000 to the benefit of his cash. Did he know that he was behind when he made that entry?

Adjourned until two o'clock.

2 P. M.

I shall have to ask your patience for a short time longer, gentlemen of the jury, as we go through other matters which I have not yet referred to.

When Court adjourned, I was calling your attention to Mr. Haven's method of covering up his deficiency, by what has been described by witnesses as set-backs, crediting up to cash notes before they were due or paid, and taking his chances of getting them in afterwards. You remember the details were given in evidence by Mr. McNair, and these set-backs commenced in 1876, continued in 1877 and 1879 until 1880, at which time they reached the enormous sum of $70,000, for the purpose of covering up his deficiency of cash. You remember that there has been no attempted explantion of this transaction except that Mr. Haven, in answer to the question put by his counsel said there was some excuse perhaps for doing this kind of thing because his rents were entered on the journal before being actually received; and he ought to have something of that kind to offset. And I called his attention to the fact that this method of entering rents was a false entry and did not commence until 1880. I didn't get much light. You remember also that he stated when upon the stand that the first time that he claimed Governor Page had money out of the treasury was in 1878; he fixed that definitely and precisely, and you have seen that this method of setting back notes commenced a year and a half before that, in June, 1876.

I wish to suggest to you that people don't make false entries on their books to cover up mistakes of others. I can understand why a man makes them when he is in a pinch himself; the conclusion is perfectly irresistible. Haven knew that in 1876 he had moneys of the company used in his business outside, and therefore wants to make his books correspond with his bank account. He gave himself credit on his books for having paid notes that he had not paid, and in that way he got through with that audit.

Now that was the situation of Mr. Haven during those years. He was out that cash. After the creation of this Finance Committee the money of the Company legitimately passed through the hands of Governor Page to a larger extent than before. You remember the testimony as to the way in which the accounts of that business were kept. Mr. Haven kept his record largely in the form of memoranda. When money was obtained by Governor Page these receipts were given, and he went off and spent the money in the business of the Company, and

would account for the moneys to Mr. Haven who would indorse them on any one of these receipts and put them back into his drawer, and all the moneys that went to Governor Page for this use, Mr. Haven was very careful to keep a correct account of. You observe he was not careful to keep an account of how he used the money for himself. He said to you upon the stand, that during the two years covered by that account Ex. A. all the business that was not settled at the time by some counter transaction or some definite arrangement went into that account, and was right so far as charges to Governor Page were concerned. Where Governor Page had moneys not acounted for at the time, the record was kept by Mr. Haven and was entered upon this account. We have not undertaken to attack this account in any of those respects. We say he charged him with some things he should not, and did not give credit for some things he should have given credit for. Why did he make up that statement called Statement B ? You remember how this thing was done. There was a debit statement prepared by Mr. Haven in which he charged Governor Page with everything of moneys which had not been accounted for otherwise. Why didn't he give him credit for the whole ? Why did he leave off the dozen or fifteen items which Governor Page has taken up and put on the foot of the paper in pencil, and was the money Page had paid out for the Company, and which Mr. Haven added to the final settlement, which he calls his settlement paper. Knowing that he was in default $40,000, would account for leaving off these items, for the reason that if he could get any of that deficiency on to Governor Page it was so much to his good.

Now, previous to this time, so far as appears from the proof, Mr. Haven had been living quietly upon his salary here. His salary was a large one, and might have been sufficient for his modest wants, but he had high pretensions as a business man ; a man who stood high in the community ; a man in whom Governor Page had a right to trust ; who cultivated Governor Page's tastes, and tried to ingratiate himself in his affections as well as confidence; and in keeping these accounts Governor Page did trust him, not only with all the business of the Railroad Company, but with the record of transactions between Governor Page himself, and the Company. Governor Page was not in the habit of keeping an account for himself but left it to Mr. Haven, and thought he would make the record right. It turns out that when the Governor tried to get a settlement he had a great deal of difficulty in the matter, and since then Governor Page has kept memoranda of his own. It does not appear that he did at this time, and the memoranda produced, in the form of three or four books which the Governor was accustomed to carry in his pocket, take up the matter substantially subsequent to the settlement Ex. A., in 1880 or 1881 ; Brother Ballard undertook to say that these books were kept out of the case. You know we claimed we had a right to keep them back on the call of the plaintiff in the opening of the case ; but you noticed also, that when the proper time came, these books were at hand ; that we did not refer to them as any part of our case ; we used them simply as an index to know where to go to on the records of the books of the Company. But on the cross-examination of Governor Page these books

were produced, one or two items were referred to, and they were produced and marked, and you noticed these books were there dropped by our friends after they were tendered to them. They avoided them and put them one side. Now we have those books here in court and we call attention to the items that are referred to in this account. All are found on the books of the Railroad Company; and these papers I put in here are the marks where the items occur, and if the jurymen have any curiosity to look them over they can do so. Now the point I was making was this, that up to the time of this Settlement A. the confidence that Mr. Page had in Mr. Haven was such that he left the keeping of accounts not only of the Company, but of Governor Page himself in this matter in his hands. That there was dilatoriness in reaching this settlement, and that the making out this Ex. B., and afterward this Ex. A., and getting to the result took so much time, is now easily accounted for. That kind of dilatoriness had become chronic with Mr. Haven at that time; he did not enter up his records punctually on the books; he was not keeping accounts of transactions until after long delays. And then soon after this he changed the time of receiving the rent every month into the month previous, for the purpose of having an apparent excuse for the shortage of the cash. If any one asked him about it, he said that is all so, but there is $20,000 coming in for rent; that is entered so because of my system of bookkeeping. And after all this it is proved clearly that Governor Page did not suspect any wrong in this matter. He is not a suspicious man. Mr. Haven used these moneys with lavish hand. He branched out into other directions, and while other people might have doubted, Mr. Page trusted in Mr. Haven, and, deceived by his professions of sincerity, never lost confidence in him until the crash came. Mr. Page may have been careless, but there were many things that misled him.

In 1879 Mr. Wilbur came up here and made an examination of the accounts of the Company, spent some time about it, and his report states, "I find the books and accounts systematically and correctly kept." And in that annual statement which Mr. Wilbur certifies to as right, there was $40,000 of these notes set back as having been paid, when in point of fact they were not paid.

It is not, therefore, any particular occasion of surprise that Governor Page did not know how this thing was being run by his friend; even after the crash came and it was determined that Mr. Haven had been guilty in this matter, it was a long time before Mr. Page could bring himself to believe that there was a shortage in the cash of the Company. This did not, as I have shown you, appear on the books of the Company at that time. It was deduced by the subsequent entries and examinations made. And he had at that time always regarded Mr. Haven as his best friend outside of his family. You have seen what relations of affectionate intimacy had been maintained. Governor Page was imposed upon to the very last, and when finally the method and result was written out and disclosed by the accounts drawn up by Mr. Haven in his own hand, and by the investigations made, Mr. Page sat down and wrote to the stockholders in his report, "Mr. Haven has grossly deceived me; it

is a terrible surprise to me, and remains a lasting grief. I had entire confidence in him, but he has forfeited all claim to trust from you."

Now, it having been demonstrated, not only demonstrated but admitted, that Mr. Haven in nine years, personally used $320,000, more or less—it varies a few thousand dollars perhaps, either way—of the money that should have been in the Company's treasury, let us look on the other side for a minute and see about his claim as to the credits that he says he should have in the accounts of the Company and thereby to account for this deficiency of his own. He brought in a sheet in which he set down those items which he says should be credited. Mr. Baldwin had credited for all deposits in the books of the Company that he could not account for as coming from the railroad sources, and had credited $24,000 in 1874; 8300 and odd dollars in 1878; $1600 in 1879, with $100 in 1880; $54,000 in 1881; $11,000 in 1882 of items which Mr. Baldwin tells you he was unable to see come from railroad sources, and therefore set them down to Mr. Haven. Mr. Haven knows whether or not these were railroad moneys, and does not undertake to say whether they were or not. He coolly proceeds to take that as a concession, and goes on to see what he can do beyond that. And what does he do? He brings, as I have stated, this sheet of additional claims, and the first three items occur prior to 1874. The first is item of salary, $8000, he thinks ought to go into his account. Just as though he wasn't checking out in 1873 as much as in 1874. And that item of salary terminated in June, 1873, and Mr. Baldwin had given him credit for the salary for the last six months of 1873. There is really no evidence that he should have this credit, but he gave it to him rather than have it said that he did not do him full justice. We have not produced any "guesser." Governor Ormsbee characterized his experts as "guessers." This statement of Mr. Baldwin we shall now bring to the test, and examine as to its facts and figures. Subsequent to 1874 Haven claims a few items, as to which he says: "I did not see they were the railroad money, but supposed they were mine." It was his business to know his own money, and not to claim things because he could not see they were railroad money, but we had done some study over this matter. Each one of these items was railroad funds, and not Haven's. [Explained in detail.] So much for the additional credits which Mr. Haven claims should be allowed in stating this account. He went, however, one step further, and put down here as a credit of July 15, 1881, $25,000, with which he said he paid three acceptances, 151, 154, and 156; and he produced proof tending to show that he purchased drafts which went to the payment of those acceptances. Perhaps he did. If he did, of course Mr. Baldwin could not have known that. Mr. Haven did not claim it to the stockholders in the Opera House when he read a list of the moneys intended to excuse him from the charge for the deficiency of the cash. He did not claim it to Mr. McLaughlin when he was at work for the purpose of charging upon Governor Page an amount equal to the shortage, and when he was showing how much money he was accountable for. He did not claim it when first on the stand, gentlemen of the jury; he was ashamed to claim it then. It may be true that he paid in that money, and that it was not

money of the corporation ; the payments he shows you to prove that he made the payment were one by draft on Pickering & Moseley, and one by draft on R. L. Day & Co., in July, 1881. On the 2d day of July, 1881, he got $22,000 from R. L. Day & Co., which he deposited to the credit of the Company. Afterwards, in the same month, he paid these acceptances—$25,000 more; and it appears here in this report that on August 15, 1881, the preferred stock was over-issued through R. L. Day & Co. 1700 shares, and through Pickering & Moseley about nine hundred shares. Now where did he get that money that he deposited here to make good that cash deficiency ? Didn't he get it by over-issuing this preferred stock ? Is not that the reasou he over-issued that preferred stock, in order to get funds to put in the treasury because he was behind in his cash ? The fact is that in 1880, as I told you, he did not pay any money back into the treasury until he had used in that year $72,000 more than he put in, at the time he was paying for this Rutland bank stock that he says he was buying with Governor Page, and at the time he was paying for the Bates House, and at the time he was making these other investments. Iu 1880 the record shows that he used $72,000, and in the summer of 1880 it shows that he used other large sums, and in 1881 the problem stared him in the face. I do not wonder that he didn't sleep nights. That is where you get it. He wanted to make up his account as Treasurer to the Company, and went into this wicked scheme of selling stock that was not stock, and put the money into the Company's treasury. And in making this very claim of $25,000 here, which he now presents for the first time, he omitted to state that he had the proceeds of Acceptance 156. So much for that credit sheet. Let us give him the $25,000 and charge him with the $10,000.

Now the statement in reference to payment of requisitions—you will remember about that. It appeared upon the books of the Company that every six months the requisition was written up ; most of the items were paid by checks, some were not. Mr. Baldwin, in making his statement, looked these items over, and all those items which were paid by checks he set one side, the rest of the items, except certain ones which from their names as well as import Mr. Haven could not have paid, he set down to the credit of Mr. Haven as being paid out of his pocket, and the result was, he gave him credit for paying $52,825.56 out of his own pocket. Mr. Haven comes forward with another statement upon which he claims $33,933 more, and Mr. Yalden takes the stand to substantiate it. I wish I had time to read you his testimony. It was that he didn't know anything about it ; that the work had been done by his assistant. We thought it was not quite satisfactory, and we produced Mr. Baldwin on the stand to overlook the work which Mr. Uhler had done and testified to through Mr. Yalden. They had had the help of Mr. Haven, and he in fact had made up the first three pages, and we turn to check after check, railroad checks, right in these items of $33,000, that Mr. Haven was here claiming the benefit of. He did not take the stand and say that he had paid all these items—he was too judicious for that ; he put forward his second deputy-assistant accountant and let him stand the brunt of the battle [Items claimed by Mr. Haven were enumerated, show-

ing the railroad checks and acceptances that paid them]; and then he had the impudence to claim $954.75, being the amount of discount of these Company notes, already once credited in the requisitions and again on the journal. I think this is the fourth time he claimed credit in this case for these discounts, and so it goes on as to all these items. The general result by that requisition sheet is not $1000 one way or the other different from where Baldwin left it. Mr. Haven says there are some other things Mr. Baldwin did not know about; I ought to have credit for some other things; one is the claim that I paid $3000 or so in the way of interest on exchange of bonds, and he brings in a sheet of that sort, which is all included in about a year and a half time, and it was at the time he was in Boston making these exchanges. He would not say but what he was furnished with funds by the Company or Governor Page, and he did not swear he paid a dollar of that out of his own money; but he says he didn't find bank checks, and therefore says he thinks it would be fair to allow it to him. Here is this coupon account which he brought in here, $68,795.63, which he claims was paid out of his own money for the coupons of the Railroad Company. No, he didn't claim that, I will take that back; he simply says that he did not find any railroad checks for it, and therefore thinks it ought to be allowed to him. He did not produce a check of his own for any of these payments. And as I have shown you, he had funds of the railroad in Boston, out of which he paid some of them. Let us find how it is made up. He claims all these coupons, paid out of the Columbian Bank account. He charges in this account as having paid himself $8898 for coupons on the Chase bonds. He says he did not include them in his statement. Mr. McNair says he did, and that the figures showing that they are included, appear on the railroad books. He left out in this jewel of a statement twenty-five months at different times where the balance did not show in his favor. It is pretended it was a complete account from March, 1874, to April, 1883. He left out twenty-five months, and it is a very curious circumstance that the balance on these months was the other way. They did not suppose we should have time to ferret it out. Well, take Mr. McNair's statement. He went over it, and was here on deck in the morning, and we did not hear any criticisms on his examination. If there had been trouble we should have heard of it. So that when you come to state the account just as Mr. Haven stated it, putting in the months left out by Mr. Haven, and leaving out the Chase bonds and other items, as to which there is no proof of his being entitled to credit, it gets it down to about thirteen or fourteen thousand dollars, which is all Mr. Haven can claim on his coupon statement. Why, he even went so far as to claim paying out of his own funds an item for coupons, which he credits Governor Page with paying, in Exhibit A. Now taking this account in view of these new facts, we give Mr. Haven the Brandon note, and $25,000 cash, and these $14,000 coupons, which I don't believe he paid for, and he still had from this Company more than $100,000 of its funds, without figuring interest on the amount. And that is the way the account stands on the proof; that is the way it stands after making all the corrections shown by

the proof, and giving him the advantage of paying everything that we cannot account for any other way. Well, who had this deficiency? As I told you in the start, the Company has not lost any more money than it has had. Its whole income is represented by this book except the $30 for the "Little House," which Mr. Haven did not put on. Large items and small, all represented by this book, and a certain portion of it is gone. There is $42,913.34 that was gone at the time Mr. Haven resigned. There are certain entries on the book that are not explained, unless he had the benefit of them at the time in his cash. Of course this missing money would tend to account for so much more, and if somebody else has furnished him money the Company must account to that person for the rest of it. Our accountants have amused themselves by putting the items together as they readily adjusted themselves, and seeing how nearly they come to accounting for the amount the Governor claims the Company should pay to him. I do not think we have got nearly all that should be charged to Mr. Haven in this account. I do not believe we have got hold of all he covered up in his books, but the fact still remains that there is enough margin between the deficiency on his books and his actual use of company cash, to account for every dollar Governor Page says he has advanced for the benefit of this corporation. Every circumstance is corroborative of the truth of this statement. The needs of Mr. Haven, his expensive ways, and his improvidence in his methods of business and living. Now, as I said before, Mr. Haven did not try to conceal deficiencies in the hands of other men by false entries and set-backs intentionally made, in order to deceive the auditors. He began that sort of thing two years before the time when he claims Governor Page began to use the money.

How was it about these dividends he didn't pay? He says he made those entries because Governor Page told him to do it. Do you believe it? Who had the motive for making those false entries and crediting himself with about $4500 of dividends that had not been paid? Look also as to these dividends on over-issued stock; he had to pay dividends on all the stock there was out, and when he got out between forty-two and three thousand shares of stock the dividends had to be paid on the excess above the legal amount, and he paid them by the Railroad Company's checks, and altered his books in order to make it appear he had paid only dividends on forty thousand of preferred stock, which was the entire amount allowed. And the further fact is in proof that Mr. Haven on the 23d of April, 1883, said: "I, Joel M. Haven, on oath say, that, as Treasurer of the Rutland Railroad Company, I have had the custody of the stock-books of the Company, and have been responsible for all entries made therein, and if any mistakes or irregularities are to be found therein, Governor Page is not responsible therefor, nor has he in any way been knowing to the existence thereof"—and swore to it. Who is the man, gentlemen, that was likely to need funds and use the money of the Company? Why, my friends here, in the innocence of their hearts thought towards the close of this trial that they had traced a clear case of embezzlement to Governor Page. It was $30 for a house at Bartonsville, sold by the Company in 1882; and so they brought on their solemn

proof here and showed that the $30 was paid into Governor Page's hands, and went into his bank account; and then they called Mr. Haven to the stand and made him swear he never heard about the money. There is the picture of it [showing drawings]; they made a chromo of the house and made Mr. Haven swear that this money never came into his hands. Mr. Haven swore that if he had got that money he should have entered it on his journal and he never heard of it in his life. And then it turns out that when Governor Page got home he gave Mr. Haven a check for that amount, and Mr. Haven didn't say anything about it on the journal, but put the money in his own private bank account. And they owned up that they had accused Governor Page falsely in this matter. That item has a significance that reaches clear through this case. Who is accounting for moneys that came into his hands, to the uttermost farthing? And who is putting money into his own pocket when he gets it in a shape where he thinks he safely can? This deficiency, gentlemen, is on Mr. Haven beyond the shadow of a doubt, and if it is, the Company has no case against Governor Page and your verdict must be for the defendant on their claim.

Now, leaving that branch of the case right there, Governor Page comes forward. He has taken up these specifications in detail, and all that he has been charged with in their original case has been fully explained except those four acceptances about which you have heard so much. As to those four acceptances, Governor Page in his account gives the Company credit for three of them, and gives them credit for an item of rent equal in amount to the fourth; and he shows on that same account in which he gives them credit for those acceptances, that he also, during the same months paid acceptances for the Company, and made those deposits in Rutland on September 11 and October 4, only one of which is entered to his credit on the stub. They made up a list of three hundred and thirty items which which they claimed to charge us, and which were to be used as a fish-pond from which to draw for meeting our counter claim. They put them in without any proof connecting them with any funds that went into Governor Page's hands, in a big bundle, and let them lie in the bottom of their coffin which contains the remains of a departed glory with which they are travelling up and down the street, and that is all we have known about them to this day. They also called strenuously for his bank account, and they saw it; they pretended they did not, but their own witness put upon the stand showed that they had it at the very time they were pretending they had not. And they produced a sheet from that account which they said were items which they did not know but Governor Page had something to do with; it was agreed that they should be connccted by proof before anything should be claimed from them, and the only thing they undertook to connect was that $30 for the house at Bartonsville. Now I want you to bear in mind one thing, and that is, that in these various settlements and adjusments, Ex. A, and previous settlements, down to the present time, Mr. Haven has represented the corporation. Governor Page has not been on both sides. Mr. Haven has done more than represent the corporation as Treasurer; he has represented Mr. Haven personally besides, be-

cause every item he could worm on to Governor Page was so much in his own pocket. Where was the interest to look out and see that all proper charges were made? Is there any doubt that Mr. Haven in making those items did not set down every item that he should to the credit of Governor Page? And in view of his interest and his desire to get on to the Governor all he could of this money, you will see why he did it too. He never yielded a single item to Governor Page until he was obliged to. So that for the purpose of making up a statement of this thing as we supposed it ought to be—and it has been prepared by Governor Page himself—we have furnished this account between Governor Page and the Company; it is true as nearly as we can get it. We do not say every item that should be is there; we have had to use the same sources of information that our brethren have, excepting so far as I stated we had this memorandum of Governor Page to show us where to look on the books and papers for matters in account; so that when it began to be investigated we found there were items as to which we saw that the apparent claim was wrong, and items as to which we have seen an apparent claim exist that did not appear at the beginning. All that is required of us is to make it up as nearly right as we can, and let you say whether it is right or not. See how this account was made up. In the first place we took the matters of the rents, since the making of this paper A—and the jury will have to bear with me because this is a matter which is vital—we had a statement of rents in Mr. Haven's own handwriting which began with March, 1880, which I understand to be the time when Exhibit A terminates, or about the time, putting in as the first item the February rent for 1880, and every item of rent is down on this sheet whether Governor Page had it or not. He did not have in his hands all of them, a great many of them came through Mr. Williams, who was another member of the Finance Committee, and others in other forms. This paper shows a large number of rent items received directly by Mr. Haven from Mr. Williams, and some paid besides by Governor Page, and the whole thing is on there from the time Exhibit A stops, down to the resignation of Mr. Haven, and on the back of that paper is written in the handwriting of Rodney McLaughlin:

"This paper was exhibited to me by Mr. Haven as a memorandum, made by him, of sums of money paid J. B. Page by Cheshire Railroad in payment rent as it became due. With the exception of some six items, or thereabouts, Mr. Haven marked them *as paid,* or duly accounted for by Mr. Page. These items, in his presence, and in that of Mr. P., I checked with a cross in pencil, Haven acknowledging that they had been properly covered into the treasury of the road. Thereupon, in respect to those six or so remaining, Mr. Page showed the evidence of, or produced the voucher for, as being also paid into the treasury and, one by one, with the exception of the one now remaining unchecked, viz., item No. 21 (from the top), he also acknowledged settled, which I also checked in same manner, Haven similarly acknowledging them paid. As to the remaining item Mr. Page produces or shows to me, checks and memoranda of nearly even date, which seem to conclusively settle that.

"RUTLAND, Aug. 1, 1883.

"(Signed) R. MCLAUGHLIN."

Mr. McLaughlin says that endorsement was made by him and says that it was true; that sheet was agreed to by Mr. Haven in Mr. McLaughlin's presence, checking them off item by item, down to the time of Mr. Haven's resignation, except as to No. 21, marked with a pen, as to which the evidence has been produced here and is not met in any manner. Now in making up our account for the purpose of this trial, we did not suppose it necessary to go back of that point, so we simply treated those items from the top down to this point as out of the case, and we begin there, bringing it out through the period of Mr. Page's presidency, and that account is in the case and is not shaken. It does not agree with the application that Mr. Haven makes in all particulars. It makes no difference in the final balance. One dollar is just as good as another dollar if you have only got enough dollars. That is our account of rent.

Now you will remember there was a question about that $15,000 represented by this item 21. The proof consists of three $5000 checks; each one of which bears the indorsement of Mr. Haven, which were deposited, one instantly, one in two months, one in a year; and Mr. Haven on his attention being called to them says, "Well, I have not been willing to quite concede that yet." He did not deny the facts; he did not explain the facts; the proof demonstrated to you just as to Mr. McLaughlin, that it was an accounting for this rent money. I hold in my hands these $15,000 of checks, which I was last referring to, all indorsed by J. M. Haven, Treasurer, and which he admitted on cross-examination went into his bank account; as to the last I was in error in saying it was indorsed by him, but it was taken up and paid to him. Now Mr. Haven never claimed any other application for those checks and does not deny that he had the money, and therefore I say there was not any question about the money. He does not attempt to get around it in any form. I might just as well take up another matter right here before I forget it, and that is, what I think was a very remarkable document produced in a very remarkable way at the close of the opening argument. There are certain items which counsel undertake now, after giving us no chance for examination and investigation, to bring into this account. Of course we produced our account when we had the floor. The plaintiffs went forward and produced their account, and we produced ours, and it seems that it would have been fair that they should have produced their final account in evidence in their reply, but from some cause, and the cause was that we should be kept from the knowledge of it, they did not let us know of their final claim until this performance you saw in court yesterday. The first item on this new account, which is the only one I mean to speak of at present, is, Balance of rent for February, 1881, paid by Cheshire Railroad Company, see Kingsbury checks, $10,000, both deposited in Redemption to the credit of Rutland and credited in Rutland to J. B. Page. That is what they say. They have not given any proof except that there was a similar item on that day credited at Redemption at the same day that it was here. Turning to this Haven sheet I find that that item of rent was one of the items that was then under consideration, and that he acknowledged its receipt. In this form, "Checks, March 28, $10,000," that is the item which Mr. Haven in his own handwriting

puts in there as applicable to this very rent, and thus every month's rent is accounted for. I do not want any more proof on that item. I do not think that will hurt us very badly.

The next subject Governor Page treated in his account is the subject of acceptances. Upon that he has made out this sheet. You will remember that they said in their bill of particulars that there were certain acceptances in 1882 that he should account for. He has made out a sheet covering the whole of the year 1882, and 1883 to August 1, and we had no idea that there was anything going to be dragged in going back of that time. We have put in here every acceptance on which the Company procured the discount, not Governor Page but the Company, and the way in which the proceeds were paid, and it balanced up over $292,000 on each side, just as they claim it to be. Of course the other acccptances which have been specially referred to, go into the general account and will be treated later. But that covers every acccptance the Railroad Company used during that period—a year and a half.

Now on this same account they have gone back to one acceptance between the time when Ex. A. begins and the time when we began our account, and say that we should be charged with $9370 as to that; and that item we say was used in the payment for the Collamore and Simpson stock; that is the item to which I called your Honor's attention; that item was used in fact for railroad purposes as shown by the memorandum in Mr. Haven's handwriting. So much for the acceptances. And then having taken care in that detailed way of all items as to which there was no dispute, Governor Page has stated his general account here, which embraced the matters in question, and which were not offset as the business went on day by day.

This case, gentlemen, has been tried from beginning to end, as I said before, and I am going to emphasize it now on the basis of deficiency. How many things have been lugged in here, which cannot have any possible bearing except to discredit Mr. Page. Done for what purpose? Not to show the balance, but to excite a prejudice in your minds against him That is all there is of it.

One subject was Acceptance 207; they spent at different times three or four days over this piece of paper; and the resident Director seemed to take special interest in having it reiterated that that acceptance was indorsed by Governor Page as President of the Bank, thereby giving the Bank's credit for the paper when it was not a bank discount and did not appear on the books of the Bank. What has that to do with the question? They knew they had no business to put that into the case upon any pretense. But when they got the Bank Cashier to look it up they found it was deposited in New York to the credit of the National Bank of Rutland and was a legitimate transaction. They say again that when he came to replace the $30,000 he dated back the entry. He admitted it the first time he was on the stand, but notwithstanding this admission, they had to get the books of the Bank and turn to it time and again simply to show that they had got that $30,000. Well, they know they had got it; that is all there was of it. When the Governor replaced that money, which he did under our advice, it was done on August 2d; he dated it back to

July, in order to have it show on the pass book that it was done before election. Suppose he did. They have got the money and I do not blame him for antedating it. It don't make any difference what day the Governor paid it. Then they proved to you that he allowed these dividend checks to be protested in September, 1882. Well, we have heard about that at great length. They were all paid, and the account stands just the same as though they were all paid the first time they were presented, and the delay has nothing to do with this case. So far as I can see, the sole relation that has to this case, they think Governor Page did not give the whole reason for the non-payment in his explanation to the Directors when he told them there was a delay in the mail. It makes no difference whether he gave the whole reason or not; the reason he gave is true as appears by the record, and as far as appears it was the only reason, because the next time the dividend checks got around they were paid. It appears that the bank account of the Bank of Rutland at the Redemption was overdrawn. You will find on September 12th the account was made good and checks paid, and if that had been done on September 9th when these items got there it would not have been drawn out in evidence here. But as I say, it don't make any difference, it is a mere question of whether or not they can give what they call a little smattering of local color and ought to be blotted out. There is one other thing and that is, they show that fact as tending to prove that at that time Governor Page was knowing to the deficiency in the cash which then existed; if I remember it right that was Mr. Ballard's argument. They put a witness on the stand with a written statement as to where that deficiency was, and that witness was Mr. Haven, whom they show knows all about it, and he gave his statement as to where that deficiency was. You may not remember it; it occurred at the beginning of the trial, and I have got his testimony about it. He didn't lay it to Governor Page excepting as to the memorandum check, and the $5000 check which Governor Page paid in December. Those are the only items he laid to Governor Page. He accounted for it first by an item of $21,000, the rent item which he said on cross-examination was not true; that his book did not show any such thing as he claimed it did. Then he claimed $9000 of vouchers in two months when it took the whole six to make that amount. And the Mansfield & Stimson, and the Mandigo items which had disappeared in some mysterious way, and the rest was this $15,000 of rent, marked item number two on Mr. McLaughlin's paper, which has been proved to you he had himself. So that in the testimony of their own witness the fact appears that these balances were not understood by anybody to represent the true amount of money on hand, but simply the result of the bookkeeping. Mr. McLaughlin says there is not a single one of those balances right as they stand, from beginning to end. They were simply results of bookkeeping. Well, another thing that they say is that he got this certificate from Mr. Pease to deceive Mr. Wilbur. Supposing he did; I say once more that does not settle the question of where the money is, and has no relation to it, but it is put in as bearing on the question as to whether or not Mr. Page knew at that time there was a shortage in the cash. I have got some memoranda about

that somewhere and perhaps I may as well speak about it now. There is not a possibility of the correctness of the claim they are making in the matter. I shall be justified in taking ten or fifteen minutes to explain this matter, because Mr. Ballard took two or three hours to exhibit his claim. You remember the facts as they existed at that time: that the Committee of the Directors of the Railroad Company had been up here and made their report; that the books of the Company had been from time to time down to Boston for the purpose of the stockholders looking them over; that Governor Page met Mr. Colledge in his bank at Boston and had been informed by him that he wanted an examination of the books by an expert, and Governor Page said all right; and that Mr. Colledge said that he should not be at the expense of the examination and the Governor says, take your examination by an expert of your own selection and let him make his account for it and we will see him paid. And so the stockholders secured this same Mr. Wilbur, and Mr. Wilbur came up on the 12th of March with a letter from Mr. Colledge. Mr. Wilbur did not know Governor Page was paying this expense and he was sent by his parties to hunt down Governor Page. Now that is the way in which the matter arose. Governor Page did not know the day he was coming, but he told Mr. Haven he was coming. Mr. Haven, as the Governor says, did not want his books overhauled. Mr. Wilbur came to the office in the afternoon and wanted to look up the books in the office; that train gets here at two o'clock, and Mr. Haven went out and got the Governor, and the discussion arose about the method of examination and Mr. Wilbur suggested that he should commence by counting the money; Governor Page told him he did not think that was a correct way to go, but the accounts should be examined and then be tested by the cash actually on hand. Mr. Wilbur says: "We have got to kuow how much cash there is is in the Bank and on hand and start from that." Governor Page turns to Mr. Haven and asks him how much his books call for; and Mr. Page goes over to the Bank and asks Mr. Pease how much his account is good for, and if it is good for the amount named by Mr. Haven, and Mr. Pease says it is, and Governor Page asks for a certificate to that effect and gets it, and Mr. Haven has cash memoranda for the balance and that makes up the $19,000 that the books call for. The certificate is that that amount was in the Bank and the account was good for it at the time; that certificate of Mr. Pease was a true certificate. That is where the truth comes in; I have got the bank books here and there is no doubt about it. Mr. Pease was called by Mr. Barrett and asked to make a deposition on this matter, and he made a deposition from which it appears that he left the Bank October, 1883, and went up to Malone, and since that time had not seen the books of the Bank, and had not had any relation to them at all; and there are some questions asked here which Brother Ballard argues to you are evidence of Governor Page's knowledge and complicity with this deficiency. Now let us see what Mr. Pease does say. [Reads.]

Q. Did you as Cashier of said Bank, in March, 1883, furnish to Mr. Haven,.or to said Page, a statement of what said Railroad Company's account was good for on the date of said statement?

A. I did, if that date referred to was the time at which an examination of the books of the Railroad Company was being made by one Wilbur.

Q. On whose application did you furnish said statement?

A. I am not sure, but I think Mr. Page and Mr. Haven both came into the Bank at the time it was asked for.

Q. How was the credit balance reported by you in said statement made up?

A. From the books of the Bank.

Q. How was the credit balance reported by you in said statement made up from the books of the Bank?

A. As I remember it, by turning to the page of the daily balance-book upon which the account of the Railroad appeared, and stating their account good in accordance with that balance.

Q. Were or not those balances taken from the ledger accounts?

A. They were not.

Q. Would they agree or not with the ledger-account balances?

A. They would unless there were some clerical errors in one account or the other.

Q. State whether the balance shown by the balance-book agreed with the balance shown by the ledger, in respect to the balance reported in said statement?

A. Undoubtedly it did, as the balance-book and the ledger were both made up from the journal.

We have got right here the daily balance-book to turn to, and the daily balance-book shows a credit of $18,416.16, and that is what he made his certificate from. The previous day it was 13,000, next 13,000, next 13,000, next 14,000. That account had been good several days for these amounts named, and Mr. Pease made a certificate that it was good for $17,000 on that day, which was true, and more than a thousand dollars over. Now Mr. Pease you know, and know he is an honest man, and one who does not make false certificates and who does not take false oaths.

Now the same thing is shown by the ledger and journal on that day. The balance-book, as Mr. Pease says, agrees with the journal. We turn to the account of J. M. Haven, Treasurer, on the ledger, and we find that the book was balanced on the 12th of March, including the business of the 10th of March, the 11th of March being Sunday, that the pass-book was written up and the book balanced on that day, and the balance found was precisely the balance found by the balance-book, $18,416.16; all the checks from the previous January are charged off, and the credits regularly written in, and that money was on hand on that day just in accordance with the certificate, and just as it had been for a week or ten days. Now, I should like to know, with that statement that the money was there and there was no occasion for the making of the fraudulent note and check testified to by Mr. Haven, who is going to believe that they were made? What is the motive for going through such a performance? In point of fact, the money was in the bank just in accordance with this certificate. This balance runs back to December 26. It gives

all the items of debit and credit during the period and brings out the balance as on the 12th as $18,416.16, and this famous $17,600 item don't appear on the books of the bank. So that the money being there and the certificate being a true one, and being one that Mr. Pease not only had a right to make but was bound to make, what is the use of their taking the responsibility of putting this curious story into the mouth of Mr. Haven? It is an impossible story. There was a good deal of testimony for the purpose of showing that the balance was not there during the entire day. They called on Mr. Peabody to get him to show that on that day he made out a statement of the amount that was required to be paid on the Chaffee judgment, on which he had an execution in his hands, and it appears that on that day there was $15,000 drawn out which was applied in payment on that execution, but it further appears that the drawing out of that money was after the books were closed, and after the close of business on that day. That is not a matter that rests in the recollection of anybody. It is not a matter of memory. The fact appears right here on this book, showing the daily business of the bank on that day; that these checks to Peabody were not paid and the certificate given during business hours. Governor Page is President of the bank and had a right to be in the bank, and after the business was done he draws those checks and takes the certificate of deposit after the business of the day had been closed, and it stands there on the books to-day. Now is there any doubt that at the time the certificate was given by Mr. Pease that the balance existed in the bank, as Mr. Pease said it did? Unless my friends have got something that they are reserving, there cannot be any doubt about it whatever.

Now, this book shows for itself that no transaction took place as Mr. Haven testifies to. I cannot conceive the fatuity under which anybody would go forward and make a statement of that kind. But on the pass-book, under date of January, they find an item of $17,600 on both sides and a pen drawn through the entries. I dare say if it had not been for the pen mark it would not have been worthy of mention. That entry was not made in March, it was made in Jannary. If I understand this system of bookkeeping, it was done on the 2d of January. If no date is given it is the last date set down above it, and it appears from that book that on January 2, two months or more prior to the transaction, Mr. Haven or somebody else made a deposit to the credit of somebody to the amount of $17,600, and on the same day a counter charge was made. Now, in view of the fact that that was not done on the 12th of March, it becomes a matter of no interest or relation to this case, and it is a matter as to which there has been no explanation given. I am inclined to think if they had asked the right question of Mr. Pease they would have got the right answer.

The amount of it is there was a transaction on that day which was reversed, and that is all you can say or do about it. If there had been any fraudulent intention, it would have been scratched off and the line used for another item. And it happened in January and not in March, and therefore, as I said, it has no relation to the case whatever. Now when was that line drawn through there? That is the only matter

of interest. I have been thinking that over, and have had a good deal of curiosity about it. It obviously was not drawn through there when the book was balanced, for it is included in the footings on both sides. It don't effect the balance a picayune. Mr. Mandell says that he saw that book in April and that line was not drawn through there then. He swears to that. Governor Page swears he did not draw that line through there, and of course he did not; that is not the way he does business. At the time Mr. Mandell came up after the election, some time in the fall of 1883; that is the first time that these lines were drawn through these figures, and it appears it was not any earlier time. Now I don't say Mr. Clement drew those lines, but I do say that there was a motive for him to do it, and I say he is just as likely to have done it as Governor Page. If anybody had wanted to get up a device for the purpose of making an entry to awaken suspicion, that would have been an easy way to do it. Now I do not say he did it, bnt I do say Governor Page was never fool enough to do any such thing as that. I do not see why anybody connected with the Railroad Company or the Bank should have done it, but it may have been done by some clerk in the Bank when the book was there at some time for balance. It is simply a line drawn through, and yet the entries stand perfectly clear just as they did before the erasure, and the balance stands just the same. Governor Page on March 12 did not know there was a deficiency, and had Mr. Wilbur's certificate that the money was there all right, and he knew that the rent-money that came in afterwards was deposited; the pretence that that entry was made at the time Mr. Wilbur was here, when he came to examine the books, has disappeared like the mist of the morning.

Now the way in which Wilbur was deceived about this matter you may have a little curiosity about. It was this: Mr. Haven wrote up in the journal for February the payment of the scrip in the Chaffee suits. Now Mr. Page got the figures for the amount required on the 12th day of March. It don't appear when these Chaffee scrip entries were put upon the book. It don't appear that Governor Page knew that the Chaffee scrip entries were taken into account in making up this amount; the result therefore is, as any of you can see, that Mr. Haven takes credit for paying this whole Chaffee judgment, interest, and costs, and all, amounting to about $25,000—$25,700—when he had not paid it. So that Mr. Haven had the $25,000 to his good in getting up his balance; and that is the way Mr. Wilbur saw the cash was good for the amount shown by the books. If Mr. Wilbur had taken Mr. Page's advice the money would not have been there, and then he would have caught him. And the proof that Governor Page was knowing to the existing deficiency at that time entirely fails unless it is shown that Governor Page knew that that $25,000 had been taken out in making up this balance, and there is not any proof of that kind. I was going to allude to the matter of these destroyed acceptances, but I won't take much time. They did not cost the Company a penny. He referred you to his memorandum book, which contains the day and date—16th day of December, 1882—when he returned them to Mr. Haven and he afterwards told Mr. Williams he had used $40,000 of acceptances and paid them himself, and

h ese are wholly immaterial because they did not enter into the Governor's accounts in any way. Governor Page took them from the office of the Company ; they belonged to Governor Page and Governor Page took them, and, as he tells you, he, perhaps foolishly, burned them up. The Company suffered no wrong, and the only result is that he had the use of some $40,000 of the Company's credit for a few months.

Now when the President of the Company was carrying on this business, and having this immense number of personal negotiations, and obliged to protect the Company from foes within and foes without, protect their funds as well as their credit, he had, as Chairman of the Finance Committee, the duty of holding these funds and seeing that they were safely kept. Under the facts of the case it was a proper and legitimate thing for him to do. The Governor was accustomed when he had money in this way to give one of these memorandum checks to Mr. Haven, and account for the application when it came round, and, as he tells you, the thing lay along as between him and Mr. Haven, until it became a source of great trouble to him, and he called upon Mr. Haven to make up this account, and you have heard this story in which Mr. Haven charged him everything proper for him to be charged with, and Governor Page put on all those credits wnich Mr. Haven had not found. They looked it over with some care, but the Governor's memorandum was deficient at the time, and so this result was reached. Now when that result was reached there were three items that he charged to Governor Page; they are marked with a cross on this paper, items not checked in the interior lines. When they came to items they were satisfied about they put in this check, and when not they put in this cross. Now Mr. Haven tells you, that first item of $11,000 Governor Page always insisted that he never had ; that Governor Page always questioned that item of $11,000. Governor Page tells you he also questioned those other items of $5000 and $16,000, and he gave Mr. Haven a memorandum at the time, and took up all the others, and it was to be a matter for investigation; and he tells you he could not get Mr. Haven to come to the scratch, and the matter drifted along from that time and stood in that shape. Now I do not think you will have any difficulty in finding that it was so; that being so the whole question is given away. And if you find that in making up this paper there was any fraud or deceit you have got to open that settlement. There was concealment and deceit in the settlement of that paper, which Governor Page was able to find out in the summer of 1883. That account was gotten up by Mr. Haven against Governor Page, for the very purpose of covering his own deficiency, knowing he was short and kuowing he had been for several years, and it was only Governor Page's confidence and trust and belief in the man that caused him to take it as he did. If it had been intended as a settlement, as they say on the other side, he would not have given a borrowed and received receipt. It is all on the paper. It is called a "memorandum check," signifying that it is a mere memorandum, and the paper shows that. The conduct of the parties show that it was not a settlement, and the evidence about that item of $11,000 shows that it was not a settlement. It was intended to indicate just how far they had got in the settlement. If you

find these facts to be so, you cannot find that paper is final. In the very last case that was tried here, a receipt of this kind was overturned —a receipt made for value. It is an ordinary rule of the law that the receipts and settlement of parties can be inquired into. A conditional settlement was reached. It was $30,000 in Mr. Haven's pocket. And so when Mr. Haven comes down on the Governor he says: "Why don't you give me your cheek and settle it up? I do not like to have a memorandum in my drawer." And the Governor gave him his check to take up the memorandum, on the understanding that the item was to be treated as still open. That such was the understanding is shown by the fact that the very next summer the Governor went to look to see whether the items were correct or not. He never treated it as an absolute settlement. He brought it to Mr. Williams and Mr. McLaughlin, and told them it was open for an adjustment.

Now, in all this matter I want you to bear in mind that nothing shows any hanging back on the part of Governor Page in giving information at any time. He made a mistake in what he said to Judge Dunton, because he did not understand the facts about acceptance 181. He has talked too much about this matter, because he has been willing to tell his story. As Mr. McLaughlin says, he seemed to have nothing to conceal. Mr. Williams tells you that at no time Mr. Haven would confess that the irregularities applied to him unless Mr. Page could show to the contrary. Mr. Haven has had full opportunity to show to the contrary of what is stated in Mr. Williams' report. He has been a witness and they have given him a chance to make a showing of what Mr. Williams says. He has had an opportunity to give his explanations, but he has not attempted to touch any one of these items, and they admit the whole, and say that Governor Page, conceding him the right to open this account at all, comes out with a credit of the number of thousands claimed by him.

This is what they say: If we go back of Statement A, and into a general account including that settlement, the result is that Governor Page comes out with $33,657.89 to his credit. Now Mr. Williams gives the facts about these items here. Mr. Williams says that he called on Mr. Haven to go over there and attend this audit, and they get him over there, and they were looking around for a chance to begin. Now do you know what took place on that occasion? Just this took place. This was the last thing of all things in the world that Mr. Haven wanted to go into. He went away and did not go back, although he promised to, and the place that saw him saw him no more. It was a little peculiar that Mr. Haven when he had an opportunity to make that explanation should have gone away and avoided the whole thing, because Mr. Williams is a most upright and honorable man. Mr. Williams goes on to say, as to this first item of $11,000, Governor Page has shown me that on or about the time of the entry he received from the Cheshire $6000 that he deposited in the Bank of Rutland, and that Mr. Haven knew of this, and he gave Mr. Haven a receipt of $5000. What did Mr. Haven say to that? Did he deny it? Did he undertake to disprove it? Has not that been just as firmly established as anything can be that Mr. Haven made a false charge against Governor Page? It was disputed at

the time. He never has pretended since 1883, but what that was a mistake.

The next item was $5000, where a note was paid at Boston, and Mr. Haven charges up to the Governor the entry on the pass-book, when the money was used to pay a note and should not be charged up at all.

The next was for rent, and he found that Mr. Haven had that very same money. He had forgotten it or he would not have made this charge—it was an improper charge. Mr. Haven had it himself in the Columbian account. Mr. Haven says now, that was the rent for January, and that he made a mistake in writing it February. He has flopped around so much that I don't propose to pursue him. He couples March and February together, and when February proves to be one of his months, he calls it January; no doubt he supposed that February was to be charged to the Governor until it was shown that he had the money himself. So that those three items, the whole facts about them, are laid out in this report. These gentlemen on the other side have had a year and a half if they wanted to test those facts; but they have not put in a word of proof, and they stand on the facts just as shown.

Now, after March 12, 1883, when this certificate had been given to Mr. Wilbur, Mr. Wilbur went off, but left his assistant, and Governor Page went off, and the next he saw of either of them was on the 7th of April, when Mr. Wilbur disclosed to Governor Page that the stock books were out of order; that he found an over-issue of stock, but assured him at the same time that the cash was correct. Just after that Governor Page went away to the city of New York, and on the 10th Mr. Haven goes bolting down to New York, and says that somebody has been here trying to further examine the books. Governor Page finds out what he can, tells him to sit down and write just what has taken place, and he does then and there sit down and write that letter that has been read in your hearing.

Governor Page, having given requisite notice, called a meeting of the Directors, and they met on the 18th of April, and at that time this action was taken which required an investigation of the accounts of the Company by the officers of the Company. Governor Page was directed to make the examination, and went to see if he could get Mr. Wilbur to do it, but he could not come and he went to see Mr. McLaughlin. Now I do not need to say that was a serious time. It was a terrible matter to have such a question hanging over its stock which was on the market. Under such circumstances the President has two duties; the first is to secure a knowledge of the facts, and protect the Company from loss pecuniarily; and the second is to see to it that the matter is not made public to the prejudice of the Company. He has got to keep the matter quiet until such time as the best interests of the Company can be subserved, and to do it he took control of the matter personally. It would not be, in his judgment, right and proper to have people rummaging around to make discoveries and disclosures. So that the next time Mr. Mandell called under guidance of the stockholder, he was met by the statement that this investigation was closed by order of the Board—the order of the President—the Board had committed it to the President as a trust and duty he rightfully owed.

And you have heard a little something of the injunctions that came in there, and the next thing you find is Mr. Haven's resignation as Treasurer. Mr. Haven resigned, as he says, on account of the multiplicity of other affairs. Of course he knew that his head would be cut off at the next meeting of the Directors if he did not resign. They had an absolute right to remove him, and he resigned with that final statement of untruth in his mouth. It was not necessary for him to give any reason. He gave a false one—that was the same time that he wrote that he alone was responsible for the irregularity in the stock. What the Directors were seeking to do was to keep it quiet, and prevent damage to their property until a full investigation could be had. They got Mr. McLaughlin up there, and then of course they call in Mr. Haven to explain as far as he could, and he comes in and tells what he is pleased to and there is the deficiency disclosed. They ask Mr. Haven where is that deficiency? Well, I think Mr. Page must have it. I have not got it myself. If Governor Page has got it, where is it? It is in the rents. Then Mr. Haven went fishing and made up this statement of rents and presented it as showing the way Governor Page had got this deficiency; and item after item was taken up and broken down and he had to admit that it was not in the rents that Governor Page had got the deficiency. Well, it must be in the acceptances. Governor Page says, I paid as many as I had. He don't undertake to state the application but gives him the numbers of them and so it shows to you. And then Mr. Haven is found mutilating the stock books of the Company, and then Governor Page tells him—that is the last straw that broke the camel's back—he tells him to take his hat and leave.

This investigation was had by Mr. Williams, and it appeared from all that could be seen at the time that there was some thirty or forty thousand dollars for which the Company should make Mr. Page whole. It appeared from all that was then seen that the rents had been accounted for; that the acceptances had been accounted for, by paying as many as were used; that the balance therefore, still existed in favor of the Governor against the Railroad Company, in respect to these moneys that he had given to Mr. Haven for the Company, and which Mr. Haven had falsely charged and failed to give credit for. Nobody knew the precise amount; nobody knew the precise items and which were the ones so misapplied or which were not, the Governor got it into his mind as far as to know there was $30,000 he ought to have from the Company, and that is the way the thing originated, and it was investigated a good while before it reached that final result, and Mr. Williams so reported; the Governor tried to get Mr. Williams to make such an entry in his book, but Williams said, No, it ought to be referred to the Board. The Board passed a resolution authorizing the making the $40,000 in notes to be used as the interests of the Company might require. And of those $40,000 notes Governor Page took to himself $30,000, believing that he had a right to, and as he tells you, with something more than his own belief behind him. Well, at the time of the election then Governor Page did not have any of the Company's moneys in his hands, because he held this money to secure the payment of his own claim. But the day after the

election he comes around to his counsel and asks us whether he ought to return the money. The evidence is that they gave him advice upon which he acted, and I am rather inclined to think it was bad advice. If we had told him to take that $30,000 and deposit it in some trust company where it could be identified and his right to it be settled, I think now it would have been more wise. This Company was good, and the character and credit Governor Page had given it were well known, and he took the course which he did in view of our advice, and his conduct from that time to this has been the conduct of a man with an honest claim. He goes before the Board and tells them that he has got this claim against the Company—and how was he treated? He tells you on the stand that he had been advised not to submit his proof to his enemies. And so after demanding his proof, etc., they branch off on to the Addison stock matter, and he made answer as to that, which, if it is as Mr. Sargent says, and he is the only one that took a memorandum, was a perfectly truthful answer. And he had to be contented with such satisfaction as he could get.

Now, I have looked over, as I said, these final statements which were submitted last night [taking up one]; here is a statement subsequent to the close of Statement A, being charges accruing to him since that settlement. That first item upon that account is an item of $10,000, rent for February 1881, as to which I have produced a record in Mr. Haven's handwriting, showing it was paid at the time.

The next item is one of $9370, which is the item as to which we are seeking to put in additional proof, and which will be discussed more fully after that question is decided.

The next and all the rest are on our account, excepting that they have put on here at the bottom this claim for Addison dividends.

That stands as a separate item by itself, and will be submitted to you by the court under such instructions as the court shall give upon that subject.

On the other side they claim the item from the Provident Institution for Savings of $10,000, and they claim to strike off our charge for $12,000 for the purchase of the Addison stock, and these are the only differences between their claim and ours as far as that statement goes.

The proceeds of 180, 181, 185, 187, and the rents and the discounts of July and all that class of matter that we have heard so much about, seem to be banished to the abodes of the dead, and the questions that are open between us now are whether we are entitled to the payment of the Addison stock purchased in by Governer Page, and whether the acceptances and payments of rent in 1881, are sufficiently vouched. That is the case as it stands in reference to embezzlement.

They have given us one other statement to which I must allude, and that is a curious statement. It says this account is made up of items traced into, but not out of, John B. Page's hands prior to the close of Statement A, but not included in that statement. So they have got back of Statement A, and into a general account including that statement.

Now, let us see about this thing. Page comes out of Statement A with a balance of $33,000; I guess that is right; it is right enough for

this purpose at any rate, and here are items said to be traced into, but not out of, Page's hands during those years. In respect to that I want to say first that Mr. Haven has sworn that there are not any other items during that period with which Page ought to be charged. He swore he charged him with everything he could charge him with, that could properly be charged to him at that time. You have seen all there is of this matter, and you understand whether it was Mr. Haven's personal interest to charge him with everything he could at that time; whether he did not ransack all the papers to find everything against Governor Page, and to make up the account carefully so as to get as much relief as he could by showing all he could into Page's hands. These are items my friends seem to think Haven left off by mistake from Statement A. He was not making mistakes that way.

The first one is Acceptance 1071. I am going through these one by one, and I hope it is the last time I shall be obliged to go through after my friends. But we know the history of the Railroad Company and its acceptances and money pretty well by this time, and no new statement will give us much additional light. As I said, the first in this paper is acceptance No. 1071. Acceptance 1071 was due September 7, 1877. This is only eight years ago, and we can look it up, for we like to find bottom facts about these things [looks in bills payable book—reads]. "September, 1877, No. 1071." I don't know as I can find all about that. Yes, here it is. That acceptance was discounted by Edward S. Moseley, and the discount was $247.97. That leaves $9752.03 as the proceeds of that acceptance; and on September 9 there was deposited in the Bank of Redemption the sum of $3295, and on the 12th there was deposited in the Redemption the sum of $6457.03, making in all $9752.03, which, with the discount, makes the full amount of the acceptance. I can also go a little further and show how my friends came to be on a false scent. Mr. Wood, in his statement of the proceeds, gives the figures as they now give them, but Mr. Haven in his entry in the bills payable book stated them as $9752.03; the difference was undoubtedly a commission paid to some one for obtaining the discount, and that money was turned over in that form to the accounts of the Treasurer.

The next item to which they call our attention is the proceeds of Acceptance 1313, as to which they refer to the deposition of Mr. Wainwright, who says that his firm gave their check to the order of John B. Page, but he does not state the date or amount of that check. We do not get a great deal of light from there, but we are not entirely in the dark about it. We have got something in the case that furnished the basis to start from. We have got the fact that on Statement A Mr. Haven credits Mr. Page with paying the discount on that very same loan, but does not charge him with the amount of the loan. I am inclined to think that if he had we would also find by reference to Mr. Haven's own book, in his own handwriting, which has been put into the case, the following entry, which we suppose refers to this transaction, in the bills payable book, as follows: "J. B. Page, at Redemption, $9000 paid by the discount of No. 1313 by H. C. Wainwright." So that No. 1313 went to pay another acceptance, as Mr. Haven says, and yet they charge it to Mr. Page in their new account.

Let us go on to the next one of $5000, May 26, 1879, discounted at the Second National Bank. There is an acceptance, the only acceptance, of $5000 in May, 1879, in here. It is numbered 1361, its date is May 31st. Mr. Meins states it as dated May 26, but he must be in error, because it falls due September 3, so it must have been dated May 31, at four months, and the discount was $102.50, which leaves the net proceeds $4897.50. And the same day $4897.50 was deposited in the Columbian Bank account to the credit of J. M. Haven. That is where the money went.

And the next one is No. 1368 for $10,000. This acceptance was also discounted at the Second National Bank, and you will find that a certain check was drawn on the Columbian that day. We also find that acceptance No. 1338 fell due on the same day at the same bank for the same amount, and that the discount on that note was $205.50, and with the discount on this note and the check on the Columbian paid the whole.

The next one is $10,000, and is No. 1395, also discounted at the Second National Bank, and the discount on that was $237.22, and the same day that note was discounted, Governor Page deposited at the Bank of Redemption the full sum of $10,000, that has never been applied to anything else in this case, and stands as the proceeds of this note, and he had a check to his own order for $237.22. So that transaction was that the Governor got the money on the discount at the Second National Bank, and deposited in Redemption the full amount of $10,000, and this check No. 1046 repaid him for the discount.

There is one remaining item here that I regret to say I have not had time to hunt out, and if we cannot find that so as to explain it we will stand by it. (Explained the next day.)

I think I have covered substantially all the ground I intended to go over; if I have not, I will give General Burnett the advantage of the time, and will close without any peroration.

THE ARGUMENT OF MR. BURNETT.

If it please your honors and gentlemen of the jury: Certainly no one approaches the close of this case with more gladness than I do. We have been through a long investigation, a heated struggle in which bad blood at times has been aroused, and many hard and unkind things said. We are glad it is over. And we come to you, gentlemen, a jury of Vermont, with the faith that you are honest and intelligent men and will seek to do your duty in this case honestly and fairly; that you will call to your aid now, after the patience you have displayed in listening to the evidence, your best faculties of memory and reason and judgment, and try to do under your oaths that which it is your duty to do, find a verdict in this case according to the law as it shall be given to you by his Honor and the testimony as it has been given to you from the witness-stand. We as lawyers here, although sometimes much wit is expended upon us, have a dnty to perform and an oath which we take when we enter our profession; and that is to be true to our clients, to be faithful to the causes we espouse, never to betray them, faithful at all times and under all circumstances, and, whatever suffering and injury may accrue to self, true to that cause which we undertake. But it is not required of an advocate to throw his personal judgment or conviction and his word on the side that he don't believe. If he goes that far he goes beyond the justifiable principle by which an advocate should be guided and should see that he guards himself.

In bringing this case to you, gentlemen of the jury, I shall try with all the power with which Heaven has endowed me not to utter any word that the truth does not justify, that the evidence does not warrant; and I come to you simply as intelligent and honest men, to counsel with you, and ask you to consider simply the questions that I shall present to your minds in the evidence, and I shall be a sort of index-finger to run through these pages and point out the matters that seem to us worthy of your consideration. The eloquent gentleman who opened this case, took occasion to say—I think certainly without warrant—that I came here with some national reputation for eloquence. That is totally unwarranted. And I took it that it was only a clever stroke of policy on my friend's part to enhance his own vivid eloquence by contrast with my plain speech. I am simply a plain, practical, hard-working attorney. And I propose to present these questions to you in a plain and practical business way, without ornament or poetry or quotation. We will leave that to the gentleman who opened this case. I shall talk this case over with you very much on the plan that my Brother Walker pursued, in a simple conversational way. I am indebted probably for my being here to the fact that I used to be Govornor Page's attorney in New York, and

know something of his affairs; perhaps also to the presence of Mr. A. R. Page who studied law with Mr. Bristow and myself. And the success that he has gained in Brooklyn and New York in a few years of practice make us rather proud of the boy that we turned out. And I am proud of his friendship. And I think he has demeaned himself here so that he has gained your good will. I hope that our side has so demeaned itself that we shall go out of this case with no prejudice, and that we shall not have injured our case.

There was a little element in my brother's opening that we did not think was worthy of him, a little effort to create prejudice here about the ladies. Gentlemen of the jury, right-thinking men, men who have a regard for the highest principles of polemics, do not drag ladies' names into the rough soilure of men's battles. They leave their names where we leave the names of our sisters and our mothers—at the altars of our homes. That is where they should be left; not brought into our battles. If it so be that our side won the approval or has the approval (we know not how it may be) of the ladies, we are glad of it. We thank them from the bottom of our hearts if it is so. Their finer intuitions, their purer perceptions, perhaps, have divined the right and their hearts turned to this side. We thank God that it is so, if it is so. But perhaps my friend is too modest. It may be that he has made a mistake. They come here perhaps to listen to the music of his voice, to his poetry and eloquence. That wins the ladies. Orpheus of old, you remember, the Greek god, played upon his lyre with such sweet music that he charmed the nymphs from the dells and they came and sat down in tranced silence at his feet. He played here with the word liar with tremendous effect, and perhaps he charmed them by that music, and they came here to listen to him. His modesty is great and he don't want to mention it.

But, gentlemen of the jury, I shall pass now as I say to a plain, practical discussion of this case, seeking not to be one-sided or unfair; I do not think an advocate wins by that sort of thing. The moment that the jury or the court loses its faith in the fairness of an advocate, he loses influence and power, and it is bad policy, not to say anything else; and he lowers his own manhood who descends to it. We shall not indulge in epithets or vituperation. That does not make a cause, it does not make truth stronger. Sometimes a man by his burning words and simulated wrath and enthusiasm may carry men for a moment off their feet; but the sober second thought of men of strong and sound minds comes back to the real truth at last. It does not win, and it is not right, gentlemen. These people who are assailed do not have their chance to throw back at us lawyers always. They cannot strike back any more than that witness who stood there day after day upon that stand and was insulted in a way that I confess made my blood boil; I do not know whether it did yours or not. He could not strike back. It was the sanctity of the lawyer's position. We could not stop it. Entrenched within his privilege, it was only a question of taste. We therefore say that in discussing this case I shall not feel justified in doing anything, but present to you the facts and let you characterize them in your minds and not we.

And, your Honor, we beg to say this: In the eight or nine long weeks that we have gone through this trial, you, with your associates, have given that patient attention, that courteous and fair decision that make us to say we depart from a Court of Vermont with the feeling that the scales of justice are evenly poised, and that her citizens may come before her courts with perfect faith that they will have justice and right administered.

Now, to fairly understand this case, a brief review of the situation, of the circumstances, commencing with the relations of the parties to the property and the thing in suit and the matters in controversy is essential. It is said that men who stand at the foot of the mountain do not comprehend its massive strength and height and wondrous proportions; but it is he that is at a distance that gets the scope of the whole, and better judges of it. You, gentlemen, are so removed perhaps from this controversy, from its bitterness, and from its partisanships, as to be able to view and judge it than we in the conflict. My Brother Walker did well when he said this case ought not to be tried on little technicalities and by merely verbel mistakes of witnesses. And as I shall review the testimouy of some of the witnesses, I shall renew the caution. I do not ask you to test a man upon a single mistake, a single slip of the tongue. They are only little indicia to you as you go along the way, to judge of men's truth. And as Brother Walker said, you must judge largely, look at the whole truth, and try and gather in and take it as a whole.

This case starts substantially (although in some of the proof we get away back of that) in 1864. Ex-Governor Stewart of this State and Mr. Birchard, had, I believe, for a brief time been the Trustees of the old Rutland and Burlington road. And in July of that year, Governor Stewart went out and Governor Page went in as Trustee. You know what this road is. It passes through your midst. It is needless for me to say how important such thoroughfares are to the prosperity and welfare of the people; their commercial prosperity, their convenience, and the happiness it brings to your doors with little cost, and all the utilities of the world. You send to the marts of the country your products and get closely their highest values. It develops, it improves, not only the material and physical welfare of the people, but it brings intellectual food. It brings you in close and quick sympathy with your fellow-men all over the land.

Now, this property, what was it when Governor Page took it up? I can better put that before you—and it is necessary that I should be a little tedious in these things—I am not going to do much else than point out a few things and recall to your memory the things that have been coming along in a rapid way in this case. I do not think I can better put this before you and show the condition of the road at that time and what this property was and what it was likely to become than to read you the report of a competent engineer. I think he was an engineer, a roadmaster of the Rutland and Burlington Railroad—Mr. George M. Chase. I read from what he says as to the condition of this road when Governor Page took it up. And by the by, this is not the Mr. Chase who was a witness on this stand. I read from the printed report of the managers

of the Rutland Railroad Company to the stockholders at a meeting in 1872, and I read from page 22 of that report:

"I went over the road, and was occupied for some six or seven days in examining the condition of the road, track, etc., on said Eastern Division, and found it in such bad condition that I went into the office, and finding Mr. Page and Mr. Merrill there, I told them that I found the road in such bad condition that I did not want to take hold of it, and I thought I had better take back-track and go home again. To which they replied that they knew it, and it was for that reason they wanted to employ me—that if the road had been in good condition they should have been satisfied with their old employees; but being in bad condition they wanted to employ me to put it in good condition. I started from Bellows Falls and travelled on the line of the road afoot from there to Rutland. I found in coming over the road the rails out of the chairs, and nothing to hold the rails in the chairs. There were nearly three thousand rails in this condition. The ties along were so that you could pull the spikes out with your fingers or kick them to pieces with your feet; about one third of the ties were in this conditiou. The rails were bent, worn out, and smashed up. I could not tell how many of them were in that condition, there were so large a number of them. There were no ditches of any amount on the line of the road; they were all filled up, and it resembled an old worn-out farm as much as anything I can think of. The fences were poor. The culverts were in a pretty good condition and the bridges were not very bad, although some of them were in rather poor state. The road-bed was pretty bad off and was muddy, and the track was bad on account of the road-bed not being gravelled up. The water-tanks were bad, there were but one or two of them in good shape. Some of the depots were in good condition and some of them were in horrid shape, and looked as if they had been deserted."

Now that was the condition of this property when Governor Page took hold of it. It was a ridge of earth and a streak of rust running across your State. There was no money in the treasury to put it in condition. There was no resource to draw upon. And it was about as hopeless a task as you can imagine for men to take hold of to make that an efficient property. It began nowhere, it ended nowhere, it connected with nothing. And as my Brother Ballard has well said, in these modern days the railroad manager who undertakes to operate his road simply from end to end is not of much worth. He has to reach out and make his connections. He has to build himself up as a great rival to other lines to take through business or he is left on the side-track. Your road would not have been worth a farthing had it been left without communication, without connections, north and south, so as to make it a great through route.

This property in this condition Governor Page took hold of. Well, there is some truth in what Brother Ballard said in his opening, that Governor Page is a strong man and skrinks from no responsibility. He likened him to Napoleon. I am not going to indulge in that sort of epithet and extravagant praise. He is not like Napoleon. But he is a strong man, a man of large brain, a far-seeing man, a wise man, who has

made this property efficient. During the years that he took hold of it and tried to put it in order he assumed great debts to put on it good rolling stock, and to put on good rails and build up the track, and let it have an opening into Montreal and an outlet at the South, so that it should gather business from the South and business from the North, and compete with his rivals, and not simply be stranded; and your village left a mere village on a side-track. And this present prosperity and your convenience and comfort in going to and from the great cities and the transmission of the produce of your farms every day of your lives, every citizen of this city and county is enjoying because of this road, and every citizen of this village is reaping the benefits of the iron will and large brain and the strength of that man who was willing to take without money this streak of rust and this ridge of dirt, and build it into a great road and make his rivals respect it.

And that is why it is, gentlemen, as I apprehend, that I have found, coming here a stranger, that I have met strangers on the streets who have come up to me and taken me by the hand and said, "We are glad to find you battling for the right; God grant that you will succeed in the fight that you are making against those who are trying to break Governor Page down." I take it it is for the reason that they have seen the things that he has done—that he has done for his State and his city.

But I pass on. What was this property a few years later? See what he did. And I do not indulge in my own mere words. In 1871 and 1872 this property was inspected by R. F. Parker, the Railroad Commissioner of Vermont, and W. B. Gilbert, a civil engineer, and how did they find it then? Here are the sharp contrasts:

"The undersigned have made a careful examination of the condition of the road-bed and track throughout its entire length, and are warranted in saying that we find them in all respects a first-class road. And the civil engineer signing this article takes pleasure in saying that he finds the condition of the road-bed from Burlington to Rutland, a distance of sixty-seven miles, in every respect equal to and in as good and perfect condition as are the Hudson River and New York Central roads—roads that are known and regarded as model roads in our country. We also find the road from Rutland to Bellows Falls, a distance of fifty-three miles, in good and safe condition. The Company are now replacing some of the iron rails and will soon place this part of the road in the same perfect condition as that part of the road from Rutland to Burlington. It is evident that the condition of your entire road previous to October 30 would compare favorably with any of the first-class roads in the country. The points where the road received injury are now being repaired and placed in a permanent condition."

That is something to have been achieved for a road that was bankrupt, that was in the hands of trustees or receivers, because the Company could not pay the interest on its mortgages, without funds to draw from, without power to mortgage the property. How was it to be done? Think of what a labor that was. But Governor Page achieved it. After the administration of this trust of the old Rutland and Burlington property from 1864 down to the last day of December, 1870, or the first day

of January, 1871, there came a close of that trust. We offered to prove here, as a good deal had been said and thrown out about it, that the Trustees in administering that property had made a profit instead of a loss, with all that had occurred. But his Honor rightfully perhaps, thinking that unnecessary, as he kept out from the case all that pertained to that old question of whether there was any liability on the part of these Trustees, said it was needless to go into that. We therefore will claim neither one thing nor the other ; whether it was profitable or unprofitable. But they came up to the question of accounting in 1871, and in that matter it is essential and important that you understand it thoroughly because it bears on several important questions in this case.

In 1867 the Rutland Railroad Company, an entirely different corporation from the one that originally built this road, was chartered. An organization took place in July of that year. And they kept up their *pro-forma* organization, though having no railroad. It was for the purpose some time probably, taking possession of this property, getting it out of the hands of the Trustees, and then operating it. They had power to exchange in their charter their preferred stock (this corporation organized in 1867) for the first-mortgage bonds of the Rutland and Burlington Railroad. That is conceded by the parties. A question comes later on whether under that charter they had the power to exchange that preferred stock for second-mortgage bonds. But however that may be (we will come to that in a moment) they commenced soon after their organization to take in the first-mortgage bonds in exchange for the preferred stock of the Company, and did that along up to 1871. That was for the purpose of getting the control eventually of this property, these Trustees still being in possession of the road, having, as Colonel Walker explained to you yesterday, made it an efficient property, with its opening north and south, and a great highway and a great rival of their competitors for profit, the Vermont Central Road. Governor Page had made it so strong a rival, had made it so formidable in dividing the business, and perhaps in making rates, that the Vermont Central came to them with a proposition to lease this property. Well, they had been carrying heavy burdens; they had $1,800,000 of these first-mortgage bonds of the old Rutland and Burlington to carry, whose interest had been accumulating all these years—none of it paid. They had had to expend all the income of the property in trying to build it up into this efficient condition. And also they had $1,200,000 of the second mortgage, under which Governor Page was operating the road as Trustee. All this burden they were carrying. And the question was, even if the stockholders got possession of the property, whether or not income could be made out of the road in addition to carrying it on and keeping it in efficient condition, and keeping up a war and rivalry with the Vermont Central, to make anything more out of it. That was a grave question. But finally Governor Page made the war so hot and made himself so formidable that these people found that, for their own life they had to absorb this road, just as the Lake Shore has had to absorb the Nickel Plate, and as the New York Central eventually will have to absorb the West Shore. Two great parallel lines warring with one

another for the same traffic cannot live. It is a divided household or worse.

Finally the Vermont Central people came to them with a proposition to lease this property. And a lease was made. That I will come to a little later.

What was essentially the first thing to do? The very first thing was for these Trustees to consent to turn over this property, if a lease was made to the Vermont Central. The Rutland Company had not taken possession of the property, had not taken it out of the hands of the Trustees. The first step was to get them to consent to pass it over. These Trustees in the administering of this property, in building it up from a worthless to an efficient condition, in leasing the Vermont Valley Road to get an outlet southward, and in building this steamboat to the north, and in building the Addison Road to have a connection with the Plattsburg Road, and so on into Montreal in the winter when the boat could not run, had assumed great obligations. The Company could not take this property upon which these Trustees held a lien, every foot of it, every car, their lien attached (prior, I believe, the Courts have held everywhere) to the mortgages, for they are expenditures on the property itself; they could not take it without satisfying them, and giving them indemnity against these burdens which they were carrying. Now, what did they do? The Trustees said, "Certainly, we will do anything that is for the benefit of the corporation; we have no selfish interest here; we do not want to go on here administering this property. Governor Page, they would fain make you believe, was receiving such a salary that he was growing rich out of it—salary as President, salary as Trustee. Has there been any manifestation that he wanted to hold on to this plum for himself. From beginning to end has there crept into this case one single instance where he sought to advance his individual interests at the expense of this corporation, or where he has not struggled at all times to advance his trust? And when the war came between self and his trust, has there ever been an instant that self did not go to the wall and the trust carried on and protected with his great strong arm and that strong personality of his? They brought on their accounting, the trust having run from 1864. It could not be done before. They were in a great contest with the first-mortgage bondholders, and it might be some concession in a legal way, so they had been advised not to go into that Cheever and Hart suit to make that account. But when the decree was handed down, sustaining the old decree, the Ellis-Gray-Loring decree—when that mandate for a new decree had been handed down for Cheever and Hart, trustees of first mortgage, decreeing that the property should be turned over to Cheever and Hart under the first mortgage—when they got into that situation and they had to make a lease, or turn it over, or satisfy these first-mortgage bondholders, then something had to be done; Governor Page had gone out and worked up this lease. They commenced under that suit to make their accounting.

What is an accounting? Why, it is simply for a man to give to those who have a right to call upon him an account of his stewardship; to give a history and show what he has done; to bring forward the pro-

ceeds and see whether he has what his books call for. It is a simple matter. You put an agent in charge of your farm and say, "Here is so much stock, so much hay, so much grain, and so many farming implements;" and you come back in two years and call upon him and say, "What have you done with the things I left with you, what have been the results of your trusteeship?" Now, that is an accounting. This was a sort of three-cornered accounting. They were the Trustees nominally under the Ellis-Gray-Loring suit which was under the first mortgage, and also under the second mortgage of the old Rutland and Burlington Railroad; under that decree, under the order of the Court, and under the decree foreclosing those mortgages. The Rutland Railroad had bought up some of these, and some were still outstanding. It had a virtual interest in the property. It was prospective owner of it all, because it was going forward and trying to acquire all these interests. Therefore the Rutland Railroad Company, which had acquired largely of these mortgages, was interested in this accounting and appointed a committee to enter upon it with these Trustees and see that they turned over the whole, that nothing stuck in their hands, and that they had put on these books nothing that was wrong during their trusteeship, and made no unjust liabilities for the Rutland Railroad Company to pay. That is what that accounting meant. It was to be done in a judicial way, before a master, where if there was any contest, these people representing this corporation, the Rutland Railroad, could come in and look over all these accounts stretching back over the whole trusteeship. Opposing counsel have sought to warp this accounting entirely out of its proper functions and out of its meaning. The meaning was that these Trustees were to bring in before that master every single item of their work, of their property, of their income, and of their obligations. Anything less than that was not an accounting. It was an accounting with these Trustees under this decree, and under this second mortgage that had been foreclosed.

Now you get the scope of it and you see what came into it. They were accounting as Trustees. They were not accounting for a month or for a day but for their whole stewardship, for their whole trust. Every single item it was the business and duty of the Court or of the master to see was brought in. Your laws provide here how people shall be notified and how their rights shall be cut off if they do not come forward and make their objections if they have any; and that is by publication in your newspapers. And that publication was made, calling upon all the world who might object to the account of these Trustees to come forward then and there and make their objections or forever hold their peace. The master gave the lawful notice. Not only that, but out of abundant caution the stockholders of the Rutland Railroad Company, the beneficiaries, the real parties in interest of these plaintiffs here, appointed a special committee to sit down and go over every item of all this property which these men had been administering and watch and guard and see that that road suffered no wrong, that there had been no breach or betrayal of trust. And they did it. That committee was Mr. Butler whom you have seen on the stand, Peter Butler of Boston, a man of in-

telligence and integrity, whose character is as high as that of any man in New England, and Mr. Kellogg and Mr. Williams, the President of the Bellows Falls Bank, whom our adversaries on the stand have had to concede to have been a competent and able man. Some of you knew him, or know of him. His integrity stood so high that no man questioned it. These men sat down with these people and went over every item of this accounting. We assume that they did because we assume, and it is a presumption of law, that men perform their duties. Finally the accounts were reported to the Court by the master. They were allowed and confirmed October, 1871. There was no haste about this, if your Honors please. The petition for the accounting was presented in March. Not until October 26th, was it finally confirmed. It was not done in a corner. It was done openly, after public advertisement in your newspapers, the master giving notice that if any man questioned any of these accounts that these men had made, after all these entries that are made upon the books, he should appear and make his objection. And I shall come to the matter of these entries later and to this $30,000 Valley item. This committee with their eyes open approving it, the account is finally allowed by the master, and approved by the Chancellor. It stands *res adjudicata.*

Now from there I turn back a moment. We had reached October, 1871. And I have simply called your attention to the fact that there had been a mandate for a decree in the Cheever and Hart suit. That decree was entered February 5, 1870. What was that decree entered in February, 1870, and what its influence and effect upon this property and upon these Trustees. Cheever and Hart held, not in and of themselves but representing a sort of pool, $645,000 of the first-mortgage bonds of the Rutland and Burlington Road. And they were seeking to enforce the lien of these bonds upon this property and have it turned over to them. There had been a long contest over that matter, whether they were entitled to foreclose. The second-mortgage boudholders had attacked the validity of that mortgage, but finally the first-mortage bondholders won. And on the 5th of February a decree was entered. That $645,000 had borne interest so long that the judgment rendered upon those bonds was $1,549,000, and about $90,000 of cost, in addition. Nearly $1,650,000 was entered up as a judgment against this property which these Trustees had been administering. That property when the Trustees took possession of it was, as you have seen, of little value.

I don't remember, Brother Barrett, whether his Honor allowed that part of Mr. Birchard's deposition to go in which states the value or not.

Mr. BARRETT.—I have no objection to your stating it from Mr. Birchard's deposition even if not allowed by the Court.

Mr. BURNETT.—It was excluded according to my recollection.

Mr. BARRETT.—I have no recollection about it.

Mr. BURNETT.—I will pass it for the present. As to what the property was worth, perhaps you have seen enough from what I have stated. Now, here was a decree rendered against this property of nearly $1,650,000.

Mr. BARRETT.—I will refer you to a page in the report which is in

evidence. The last paragraph on page 38, which states it, I think, stronger than Mr. Birchard's deposition.

Mr. BURNETT.—If I recollect right, Mr. Birchard stated what the property would have been worth at the rate at which the securities were selling, but I do not see his statement and I pass it for the present.

By this mandate, possession was to be surrendered immediately, but it was suggested by the Court rendering the judgment that it be held with the Chancellor until the following June, 1870. Therefore these Trustees or the Directors of the Rutland Railroad had from February 5th until the 1st of June, to raise $1,650,000, or the property go into the hands of this Cheever and Hart party. And what then would have been its condition. Where would have been any of these gentlemen who represent the Rutland Railroad Company, had the property been permitted to go under that decree? It would have cut out the second-mortgage bondholders. The stock would not have been worth a dollar. And these first-mortgage bondholders might have operated that property for all time or organized anew or had it sold at public auction. There is no telling what would have become of it. And there within that short space of time, from February to June, $1,650,000 had to be raised by somebody who had a strange power to raise money and who was not afraid to shoulder great burdens.

What did the Directors of the corporation do when they found themselves in this position? Why, they turned to the man that alone could save them. They had failed and refused to take his advice in administering this property in a former instance. He had made a settlement, as Colonel Walker informed you yesterday; he had made an adjustment of this Cheever and Hart matter (I will refer to that in a moment) that would have saved them this difficulty and saved them a great amount of money; but his board refused to back him. And when they found themselves pushed to the wall, what did they do? They turned like a lot of helpless children to Governor Page, and they passed this resolution at a meeting held March 10, 1870. Present, all the board. "Voted, that the President of the corporation be authorized in his discretion," etc. No limitation on his powers now when they were in a corner. "Voted, that the president of the corporation be authorized in his discretion to negotiate with the committee of the trustees of the first mortgage." Talk about power being given to the President. Then was not the time to talk about power when there was something to be saved. They gave him *all* power. What did he do? He got hold of these parties and made a stipulation by agreeing upon terms upon which this decree should be paid off. By that agreement there was to be paid, including expenses of nearly $100,000, up to and by the first day of April, 1871, when the last payment was to be made, this $1,600,000 and odd, or else the property had to go. Then Governor Page went at it to raise the money. He went to work in the first place and negotiated with these parties plaintiff in the decree. He had to carry on two or three things at a time. In the next place he had to negotiate with the Central Vermont people to see if he could make this lease. If that lease could be assured, then financiers would see here was a permanent income, so that if they advanced the

money to this corporation there would be some source from which would come their interest, and that would be secure. So he starts up with one hand to gather up the strings there and make the property of worth and of value; and then, getting these well in his grip, he turns to persons interested in the property, financiers in Boston and elsewhere, and said, You must help us, and loan us this money; you can see that our property is going to be of value and have an income; we have got up so many of the first-mortgage bonds, and this stock will become really equivalent to a first lien upon the road, especially if we can get up all of these two mortgages. He convinced them. And he raised large sums of money, so that up to the time when the lease was actually made there was only about $400,000 more to be raised to pay off the Cheever and Hart decree. This Mr. Chase who was on the stand was of great assistsnce. He helped do the work. Now, do you think that was any light work? When they came kneeling down to Governor Page and asked him to help, giving him absolute discretion, to save their property, he might very well have said to them: Gentlemen, now you see the wisdom of what I advocated and what I have done once before. He had made a contract. And in his report of 1872 Governor Page speaks of this perhaps as he had a right to, where he says:

"In the fall of 1868 a settlement was attempted of all the pending litigation, and was so far consummated as to be reduced to writing. This paper I have included in the Appendix on page 60. When the parties to that contract separated it was supposed that peace was at last declared; that large expenses would be stopped and all the energies of the managers given to the development of your property. It was necessary to secure the cordial co-operation of the directors in order to carry out this agreement. This was found impossible, owing to the influence of interested parties, and I was obliged to notify Mr. Farlow, chairman of the first bondholders' committee, to that effect. In reply I received the following letter:

"BOSTON, Dec 17, 1868.

Hon. John B. Page, Rutland, Vt.

DEAR SIR: Your favor dated at Rutland the 12th, but mailed at Boston the 16th inst., reached me last evening. I take due notice of what you say, that "after due consideration by the parties acting with you, and under the advice of counsel, you now withdraw from further negotiation for a settlement of the pending litigation between the bondholders of the Rutland and Burlington Railroad."

I quite agree with you in the belief you express that an early equitable settlement would promote the interests of all parties, and I think it will be cause for regret that you were unable to secure the sanction and necessary vote of your Directors to the equitable terms arranged between yourself, Judge Prout, and Mr. Edmunds, and accepted by me in behalf of those I represent.

Regretting individually that we have had so much labor-negotiating in vain, I remain, very truly yours,

J. S. FARLOW.

Upon examination of the arrangement above referred to it will be seen that the first bonds were to be paid for at the rate of one hundred eighty-nine dollars and twenty-five cents for each one hundred dollars of principal of bonds as of October 31, 1868. Adding the interest to first February, 1870, on the same basis, would give one hundred ninety-eight dollars for each one hundred dollars of principal of bonds; the maximum amount to be paid for being four hundred and fifty thousand dollars of principal of the bonds. Under the "mandate for decree" there was paid two hundred thirty-seven dollars and sixty-nine cents, as of first day of February, 1870, and the amount of bonds then was six hundred and forty-five thousand nine hundred dollars, represented by Cheever and Hart. It will be noticed by the vote already given (see page 37) that, on account of the additional allowance under the opinion of the court for *interest upon interest semi-annually*, additional preferred stock was issued to all who had converted their bonds, to an amount equal to the sum due on each bond under the "mandate for decree." The result was, that the preferred capital stock was *increased* over what it would have been under the said agreement in the sum of..... $ 714,400

To raise the money upon the preferred stock at par to discharge the "decree of court," the subscribers for the stock were given 7 per cent bonds as a *bonus*. There were outstanding..... 500,000

The dividend and interest accounts have been increased by payment on this stock and bonds to February 1, 1872..... 170,016

Additional costs, including amount paid Cheever and Hart, under the third provision of the "stipulation" on page 33, with interest to February 1, 1872..... 146,000

$1,530,416

Here we have an increased capital and debt of one million five hundred thirty thousand four hundred and sixteen dollars. Well might Mr. Farlow say, "I think it will be cause for regret that you were unable to secure the sanction and necessary vote of your Directors to the equitable terms arranged between yourself, Judge Prout, and Mr. Edmunds."

He was not always receiving the support of his Directors. He received the support of his Directors after a time because they learned that his course was wise and that which he sought to do was right. To raise this money under the Cheever and Hart decree, they voted to issue a million of stock, which, in addition to that which had been already voted, made the total amount of stock $4,300,000, of the Rutland Railroad Company, and a bonus (I will not go back to read that) to induce people to take that stock and raise this money and to save the property from passing under this decree and out of the hands of this corporation. They voted, and had to issue bonds as a bonus as an inducement. A circular was prepared and sent out, and every effort made to induce people to subscribe to that additional million of stock which had to be raised before the following April, and which had to be secured far enough to make the property secure before they could complete their lease to the Central

Vermont. And bonds to the amount of $500,000, carrying 7 per cent interest, were voted. To every subscriber for a bundred shares of the preferred stock of the Rutland Railroad Company, tbere would be issued with them 30 per cent in bonds; that is, for every $100 in stock there would be $30 in value of these bonds. And by great effort, they got enough subscribed, within $300,000 or $400,000 by the time they were to make the lease.

And a funny thing has crept in to give color and tone, as our friends on the otber side would say, to tbis matter; and that is, that these same gentlemen who are now Directors of this Company, and are now here prosecuting Governor Page to recover from him the bonds he received as bonus when he subscribed for this stock, subscribed for this preferred stock and took this bonus. Oue of tbe gentlemen who was put on the Committee of the Railroad Company to bring this suit against Governor Page, namely, Mr. Barnard, subscribed for $250,000, I believe, of tbis preferred stock, and got some $80,000 of this bonus of bonds. That is what he did. No fault in him. It was a good thing for the Company to have done. That was not a fault. But to show the nature of this suit, and its conduct, and what it is: He was on the Committee, one of the leading old Directors. They came up here and planned a scheme for the recovery—I don't know whether it is $100,000 or $150,000, but an enormous sum—against Governor Page for doing what he has done, nothing more; and he has got his money in his pocket when he is on the stand. And that is Brotber Barnard. It only characterizes the nature of these proceedings.

Well, they raised this $300,000 or $400,000 by the time this lease was made, and then the Governor had to put his shoulder to the wheel and get this debt in such shape that these people bolding this decree would consent to release the property, to let it be turned over under the lease. Tbat was done, and the property was turned over. All these leases and sub-leases of property, which tbe Trustees had made like the Vermont Valley, and a whole host of tbem, are set out here in this report, pages 42 and 43, and were assigned first to the Rutland Railroad Company, and then tbey were reassigned to the Vermont Central Company, the Rutland Company getting tbe benefit of tbese leases and becoming the lessors of tbis property; the Trustees not holding anything in and to themselves, but passing everything into the Rutland Railroad Company so as to consummate the lease, passing it on to the Vermont Central. In passing this property out of their hands, and to do it speedily, there being some unadjusted matters perhaps, obligations, liabilities, the Dircctors and stockholders (they both acted) said, If you gentlemen now will pass this property over so that this lease, which is to be advantageous to us, can be perfected, we will give you indemnity against these liabilities under your trust; we have had the Committee go over your accounts; we are satisfied that they are all right; now then, we will vote to you [and they did vote] a tbousand shares [I want you to bear this in mind] of preferred stock, and a thousand shares of the common stock, and in addition to that, all the notes to be given for the rent; everything in fact that they were to receive under this lease, these Trus-

tees were to have and hold until such a time as they should be satisfied (there was no limit as to that) against any liability they might be under as Trustees. And that was passed over and delivered to them, and thereupon they surrendered the property, having gone into a full accounting and all that. This was voted by the Directors, December 1, 1870, and ratified by the stockholders, January 26, 1871.

It was on this stock that Governor Page received at a subsequent time dividends, which were characterized (in this beautiful report that has been referred to by my friend) as having been "wrongly" paid to Governor Page. I will come to that again.

The lease was made to the Vermont Central Railroad Company, and that Company was to pay annually $376,000, and then, in addition, annually, commencing with a $40,000 payment in 1873, it increased to $94,000 in 1874; to $108,000 (and this is all the time in addition to $376,000) in1875; to $148,000 in 1876; to $162,000 in 1877; to $162,000 in 1878; to $175,500 in 1879, and at the rate of $94,500 each six months thereafter during the lease, which was twenty years. That made the rental from that time $565,000 per year; enough to have paid the interest on all mortgages, paid dividends on its stock, interest on the fixed obligations, and at the end of twenty years, or towards the close of it, paying dividends on its common stock up to as high as five per cent.

Now that was a piece of financiering which Governor Page had worked out. A man is not responsible for the breach of a contract which he makes with his fellow-man. He does the best he can. He makes negotiations and financial transactions covering great properties, and passes them over and makes contracts with men of standing and character, and he has a right to rely on the assumption that they will be carried out. He had carried this property, which was as nothing in 1864, until it commanded an income in the judgment of wise men, of practical men, of $565,000 per annum. Was it not something of which Governor Page might not only be proud, but for which his fellow-citizens might be proud of him? Shouldering a responsibility of raising $1,650,000 out of a bankrupt property in four-months time, and bringing it through and securing a lease that paid $565,000 per annum. Fancy his rival doing that. *He* did not shoulder any debts. They have got no debts just now; no, and when there is, you will find these people scuttling away from this Railroad like rats from a sinking ship. No personal obligations will be assumed by them.

Mr. BALLARD—That is a quotation ; you said you would not use any quotations.

Mr. BURNETT—I said I would not quote any poetry. I am dealing with hard facts. I leave you to carry this case on Hudibras, Shakespeare and Whittier and Bret Harte and Ballard.

Well, gentlemen, that was what Governor Page had achieved at that time. And it ran along, they paying their rents, and the Company beginning to lift itself out of its embarrassments and its difficulties and paying itself into good shape along up to 1874 from 1871. And then came trouble. This world is full of trouble. These Central Vermont people did not want to pay this increasing rent. They began

to squirm under their contract. I don't know how the fact is, but it has been suggested that these gentlemen made this lease for the sake of getting rid of a rival and outwitting Governor Page, and controlling their rival, and that they intended to break it. I don't know that it is true. I dislike to believe that the men controlling the Central Vermont property were of that character. But, at any rate, they began to find the burden heavy, and threats were thrown out; and it was in March, 1874, I think, that they passed a resolution that after the 1st of April, 1874, they would pay their rent no longer; that they would stop entirely. Well, that would have been a mighty bad condition for the Rutland Railroad property if they could receive no more income. They had a floating debt; they had the interest on bonds. They would have been wrecked. The phrase used by my friend in his speech would have been very applicable, "a wrecked corporation," had they been permitted to do that. And again came in the man who was ready to assume any responsibility. And he said, "Gentlemen, if that is your game, if that is what you intend to do, we will see what we can do with you, whether that can be met, and we will manœuvre our hosts while you manœuvre yours, and draw the line of battle." What did Governor Page do? Without taking into his confidence this Mr. Haven, who takes umbrage at it, and perhaps Brother Chase who publishes the wrecked condition and burdens of this Company in Boston, and thinks that is the way to raise its credit—without taking any of these men into his confidence, but as Colonel Walker said, with a becoming reticence, he goes to his friends and makes a pool and gets these men as individuals to sustain this Company, strong men, able men, and he said to them, Come and put your shoulder to mine, touch elbows, move forward, and see if we can meet this rival. They made up a pool and bought 9800 shares, nearly half of the capital of the Vermont Central; and then they said, we will walk in here and vote and see if you will break your contract. It brought them up to a halt. But here an astonishing thing happened, and it is in the public records of Vermont that your Supreme Court here held (perhaps rightfully, but I venture to say there is hardly a lawyer in the land that would have dreamed that the courts would so hold) that when our parties were going to an annual meeting to vote on the stock to hold that property and hold them to their contract, these old directors of the Vermont Central could call a meeting in a railroad car and vote to issue additional stock and keep the control, and were enabled to break this contract through that ruse. That is in your reports of your courts here and it is a matter of public record. But still Governor Page had grip enough upon them to make them carry out their contract until 1875. And the difference between breaking it in April, 1874 and April, 1875, was nearly a quarter of a million dollars. In his own pocket? Oh, no; oh, no; but into the treasury of the Rutland Railroad Company. That was his duty. Perhaps no great credit to be claimed from that; but there was no betrayal of trust. That whole Central Vermont purchase made by Governor Page was a little outside the strict line of his duty perhaps. And I wonder that they did not bring in some specification here for violating

his duty, for embezzling money to buy this Vermont Central stock. It would be on a par with the rest of this business here. They take all advantages, they pocket everything they can get in any one of Governor Page's transactions, and then they want him to pay back all that he has paid out in getting them ; keep all the advantage and then try to get back the consideration. It was a wonder they did not bring in this Central Vermont matter in some way. It is just as much a conversion and embezzlement as many of these things they have included in their specifications. We are not going to paint Governor Page in unwarranted colors. He has his faults, strong ones like his nature, strong with great characteristics. One of his faults is that he is not regardful enough of the feelings, and perhaps of the rights, of other men. He sees a great good to be accomplished and moves toward it, conscious of the rightfulness of the end which he seeks. In acquiring this Vermont Central stock to keep that contract sacred and whole, he did what the law does not authorize him to do, that was to go and pledge the securities of his own Company or to buy up the stock of a rival Company. It is beyond the charter power probably. He had no right to do that. Yet, was he wrong in doing it? Who shall say? Brother Ballard has said you must not stop at the end lines of your road. It is true. And another thing, Governor Page is sometimes regardless, thoughtless, heedless, not over scrupulous of the minutiæ of orders and by-laws, and of the regular order of things, and his trouble comes from moving forward strongly, brushing aside mere forms, mere regulations, when an end has to be achieved. These are his faults. And another great part of Governor Page's troubles has come from his over confidence in the trustworthiness of his fellow-men, a confiding nature which is often deceived. He did assume to purchase this Vermont Central stock for the reasons that I have told you. The claim has been brought in here that he used the credit of this Company to his own advantage. And plaintiff seeks to charge him interest. You remember the instance when there was an exchange of checks over night; these men managing the prosecution sat up nights working and digging, and thought they had found something that would carry this jury clear off their feet; and they would hold Governor Page and they would make a great deal of dirt and smut rest upon him because the Brandon Manufacturing Company had borrowed the credit of this Company for twenty-four hours.

Now, there is fairness in human affairs, even of corporations. You treat them as having an individuality. They have a personality to be treated with in the business affairs of the world. They have the personality which the law gives them and they are to be held accountable and held responsible for the acts they commit through their agents. It is true as an old English rough judge once said, that it is a pity—speaking of the power of corporations and the wrongs which they do—that for these they have no "souls to be damned or bodies to be kicked," for only in that way sometimes could full justice be done. But they have to answer in dollars and cents, and that is a pretty good way. The complaint is made here that the Governor has used the credit of this corporation. Let us see on the other side. He said, to save this contract we must

step in here and purchase this stock. And he did it. He did it how? He used not only the Company's credit, but he used his own. And here is the note that has been put in evidence. He stepped forward and made his individual note, in the purchase of that stock, of $100,000. And he put up what with it? His own collaterals of $40,000 Rutland first-mortgage bonds, 289 shares of Champlain Transportation Co. stock, $10,000 in shares of Central Vermont common stock. Did he hesitate? If this lease was broken was the property worth a cent? Will his note ever be paid? It was a great individual risk. A hundred thousand dollars is a good deal of money for a man to put up, and put his own collaterals to back it. It was all on the cast of a die. And shall they come in here now and seek to break this man down and hound him to his death for these things that they set up here; and because he had and used the credit of the Company to the amount of $40,000? Not if there is a sense of justice in the hearts of Vermont jurors.

In addition to this $100,000 that I have shown you that Governor Page put up of his own credit, in 1875, there were other notes—$17,500 May 17, and September 21, $25,000; May 17, 1876, $25,000; I think this $25,000 is a renewal of the other; and again $17,500, and $12,000, and $10,000. There were $72,000 altogether of these notes in this same transaction. Out of all this, not one cent, the proof is, which you are bound to take—for there is not a scintilla of evidence to the contrary—rested in Govorner Page's pocket—not a cent.

You recollect that they called him up and asked whether any profit was made out of it, whether he made anything out of this transaction. He said, "I know of none except perhaps a little profit that was realized on this stock, and that went to the benefit of the Company; I know that not one cent of profit rested in my pocket." And there he left it; and no effort was made to contradict it.

There was a great transaction, a very admirable piece of work, breaking through forms and regulations, perhaps violating the rule of what an officer in form or in law is authorized to do. If he had regarded simply the letter of the law this contract would have been broken the 1st of April, 1874, and this Company would have been short nearly a quarter of a million dollars. But he looked at the spirit of the work he had to do, the soul of things; and he said, It is my duty to guard and protect and to advance the real interests of my corporation, and not regard the mere letter of the regulation laid down for my government.

Now, gentlemen, after April 1, 1875, the Central Vermont broke this contract and reduced the rent to $258,000 per annum. And what was the result? What was the amount of the burden on the Rutland Company's shoulders in 1877? Addison rent, $35,000; scrip dividends on $300,000 with interest thereon, $18,000 per annum; floating debt and old bonds, $400,000, with the interest, $25,000 a year; equipment 7s and 8s, $1,000,000, amounting to $75,000 per annum; first-mortgage 8s, $1,500,000, amounting to $120,000 a year; salaries and incidental expenses, taxes, etc., $18,000; making a burden that they could not shift of $291,000 per annum. And the amount of the income adding some little items of rent amounted only to $258,000; $32,000 a year worse than

nothing. A bankrupt concern. That was their standing when that lease was broken. Here was another load to shoulder. And who was to do it and lift this Company out again? Did Governor Page shrink from the work? No, gentlemen; as Colonel Walker told you yesterday, that situation had to be faced and something done, or else these old mortgage bondholders (and there were some still out) could foreclose. The first-mortgage 8s could foreclose on their $1,500,000. The stock would not be worth a cent. It would be questionable whether any of the other mortgages except the first one foreclosed would be worth anything, and the whole property would be swept out. What was to be done? Well, they got together and had a conference, and they said this interest must be reduced; eight per cent is too much in the present worth of money; perhaps immediately after the war, or soon after, the rates were high and gold at a premium and we then had to pay high rates, seven and eight per cent, but now it is not worth that; it is justice to these men as well as to the road that this interest should be reduced and that we should not have to pay such a rate of interest.

And so in 1878 on the first of October or November, they paid their last coupons and shut down on these obligations, and said they must be reduced. Governor Page and his friends went out at first and bought up shares to control the Addison road. They said that rent is too much and that must be reduced; they are getting seven per cent dividends and we must cut that down. We as individuals own a large proportion; it is necessary that we buy up enough to control it, and it shall be cut down; we must come within the lines of our income—$258,000 per annum. That was accomplished in 1878, 1879, and 1880. It was not an easy thing to do. It took good work, a great deal of diplomacy, and a great deal of persuasion. These men knew their rights who had these eight-per-cent bonds. They realized that they could come over here in Vermont and commence suits of foreclosure on every coupon that matured and get judgment. Think of it, gentlemen. Was it an easy thing to persuade men to forgive the debt and consent to its being reduced into the lines where it could be paid? That work was done and all was reduced except the Chase bonds, or the Chase pool, representing about $200,000 of these eight-per-cent bonds. And there comes in that struggle and the purchase of these Chase bonds and the necessity for it. Now, you will see as Colonel Walker expressed it, the side lights thrown on these things. You will see how the testimony bears, how these lines of truth converge to certain points.

There is another thing to be spoken of here. As my Brother Ballard was making his speech, the answer would almost flash to my tongue, it seemed so easy and conclusive. You remember what he said in regard to this settlement paper "A," and I thought he was going to smash this table with his fist in announcing to you that *that must stand.* He said if Governor Page had coming to him $40,000 and odd from the Railroad Company, even if he was worth $300,000, why was it that he should not be enforcing it, that he shouldn't be taking his debtor by the throat and saying, "Pay me that which thou owest." You remember what he said in regard to that. Most astonishing. Well, men speak

sometimes the sentiments of their clients. That would have been so doubtless with his client. Is it strange, now that you have seen Governor Page's conduct here, is it strange that he did not go to his debtor, this bankrupt concern, unable to pay the interest on its obligations along in 1878—and this was the time when paper "A" was made—was it wonderful that he did not take his debtor by the throat and say, "Pay me that which thou owest me?" No; he had a larger spirit and a more manful way. First let me lift up this corporation, he said; "There are other people who have great interests at stake and who have much to claim from this Company; let me first get it on its feet; there will be time enough for me to get my rights, to look into this statement; I have done justice to Mr. Haven; he has got his memoranda; I have done my duty to him; he can make out his cash accounts; let me bear up and lift up this drooping corporation and put it on its feet, and then will be time enough for me to speak." This is the difference in men. Was it wonderful? Was it wonderful that he should not come in and be the first, being the President, to enforce his individual claim, when the Company could not pay its annual dues by $32,000 a year? And that did not change until 1881. The Peters bonds were not taken up until 1882.

It is said that every truth in the world is in harmony with every other truth in the world. They go hand in hand, like two gentle sisters, never warring with each other. Wherever you get one fundamental truth fixed, every other thing that is true will harmonize and fit in with it. When we establish the nature of the man, his way of dealing with his trusts, you will see that in every relation with his trust he will be the same man with the same attributes and with the same purposes. Every falsehood in the world will be at war, from the days of the Garden of Eden until your great hills shall be shaken from their foundations, with every truth that shall live in that time.

In 1883, after the Chase bonds had been taken up, and the Peters bonds cut down, the interest to six per cent on the eight per cents and the seven per cent bonds cut down to five, and the Company put on a paying basis, the floating debt substantially wiped out (and would have been totally wiped out, except for this pressure for dividends that had been started in 1881), then what was done? There came rumors; there came struggles for the dividends; perhaps opposition on Governor Page's part to paying dividends—and there are suspicious men always; in this case their suspicion was justified to a certain extent, and they got up investigation after investigation. The war began in 1883 that has resulted in this suit.

It has come out in evidence in this case that a suit is pending in this Court against parties for holding stock—if not it appears in the documents in evidence—it has come out here that Governor Page has commenced libel suits against various parties. It has come out in evidence that there is much bitterness and conflict. And how does it come about that this suit which, as Brother Ballard styles it, is the only proper suit that has been brought, is also before you for disposition? To

understand this situation you have got to look at a few antecedent facts.

And at the risk of being tedious I will read you a little from the report called the McLaughlin report of July 7th, 1883; I suppose, called that because it is not Mr. McLaughlin's report; it is the report of other people. And I will read you a little from what Brother Ballard called the report of Governor Page, I suppose because Governor Page did not make it; it is signed by all the others except Governor Page. When a deficiency had been discovered in the Treasury of the Rutland Railroad Company, and the air was filled with rumors and charges and counter-charges, and people were bewildered and hardly knew what the truth was and did not know how far it might extend, it probably resulted in many unjust things being said, and perhaps more unjust things being done. But after the atmosphere had cleared a little and they had discovered what had taken place, all the Directors, consisting of Mr. Whitney, Mr. Birchard, Mr. Robinson, Mr. Hickok, Mr. Williams, and Judge Prout, united in issuing to the people interested in this property a circular. Now, note that this is not signed by Governor Page, although extracts were read from it the other day by Brother Ballard; undoubtedly making a simple mistake, saying it was Governor Page's report. His report is in the back part of the pamphlet, but is a different article. I read you an extract from this statement of the other members of the Board:

"It becomes our painful duty to announce to you that the cash account of your late Treasurer, Joel M. Haven, is short to an amount not less than $38,000—and possibly a larger sum—which can only be determined by a thorough investigation of all the accounts of the Company for a series of years; which investigation is now being made by a skilful accountant, and nearly completed. It also appears that there has been a large over-issue of stock, at one time amounting, according to the books, to 5392 shares, but the actual over-issue apparently outstanding is now believed to be 2391 shares, if spurious shares can be made valid by the surrender of other stock without action by the corporation. That there was an over-issue was discovered by an examination of the stock-books by H. B. Wilbur, at the suggestion, as we understand, of the President. When these irregularities became known to the President he requested and secured the resignation of Mr. Haven, and Mr. J. H. Williams was appointed Treasurer pro tem., which office he still holds. An attachment has been placed upon the property of Mr. Haven, and it is hoped that, together with his bonds, enough may be secured to save the road from ultimate loss."

Now, here comes a significant feature:

"The examination of the stock-books has been thorough and complete, and revealed the fact that your late Treasurer has over-issued both the preferred and the common stock from time to time, and to large amounts. One of the latest and most important transactions took place in November last. There was issued at that time to P. W. Clement, 3170 shares of the preferred stock, for which no valid shares were surrendered. These spurious shares, invalid in their origin, and issued under

very peculiar circumstances, are now in first hands, and, as we believe, afford no ground for claim against the corporation."

Now, if that was so and Joel M. Haven was not personally responsible, whoever Mr. P. W. Clement represented would have to answer, or he himself answer to the Company, in the return of those shares or their value. That was an interesting situation just at that time—but a little further—"afford no ground for claim against the corporation; and under advice of their counsel a bill in chancery has been filed against Joel M. Haven, P. W. Clement, Charles Clement, and John A. Mead, the latter of whom was a party to the sales of the said spurious shares to the Clements."

It might well be asked, How much did this Dr. Mead know about it? He was a party to the sale as he admitted on the stand here.

"And a temporary injunction obtained restraining them from making any use of the said shares, or bringing suit in regard to them until the Court adjudicates as to the matter. It is intended to faithfully prosecute this suit, and it is believed that upon the evidence the Company have, these shares will be cancelled and the Company suffer no loss therefrom.

. . . . . .

"We annex a statement," say these gentlemen, "from Mr. McLaughlin, the accountant employed by the Company in regard to the stock and cash accounts of the Company, showing that no other officer of the Company but the late Treasurer is in any way responsible for the irregularities."

Then, here comes a statement of McLaughlin, following right on. We do not have to rely on one witness for our evidence. We do not have to rely on our side for our evidence. And you will see during the discussion of this case I go to the witnesses of my adversary and shall prove our case by them. Here is Mr. Mc Laughlin:

"My examination of the books of your Company is nearly completed. By direction of the President I have made it very thorough, and shall prepare a full and particular statement of the condition of all accounts.

"The preferred stock was over-issued 2741 shares, of which 350 shares have since been replaced by the late Treasurer, leaving a balance of 2391 shares. The over-issue had varied in amount at different periods, being replaced, in part, from time to time. The effect of this replacement I do not pretend to understand. In November last, when 3170 shares were made by the Treasurer in one transfer to himself, and to his own debit (personally), there would not have been a single share to his credit providing all transfers and debits to his account had been properly posted. The details of this will be shown in my report, as also the exact extent of over-issue at the time when the three dividends of August, 1881, and February and August, 1882, were made, and how the books were then altered so as to appear correct. There is an over-issue of common stock, about 500 shares. This amount cannot yet be given exactly. A deficit exists in cash accounts which amounts to some $38,000. This is indefinitely stated, for the reason that it includes unpaid dividends,

charged as paid, the exact amount of which cannot be ascertained till all stockholders are heard from. The Treasurer claims that some portion of his money remains in the hands of the President unaccounted for; the fact being, that for a certain period, by vote of the Directors, and for satisfactory reasons, the rent of the Cheshire Railroad Company was paid directly to your President, who acted as temporary agent or despositary of such moneys, paying the Company's obligations, depositing in bank, and otherwise accounting to the Treasurer for the same. On the other hand, the President avers that he has fully accounted for such receipts and *more.*"

Now, they say this claim of ours is all new, and that Governor Page had not suggested his claim up to the time of the meeting of his board. Again—

"And in every instance has traced the money directly into the hands of the Treasurer and has obtained his acknowledgment thereof."

That is true. And here is the paper on which the accounting has been made.

"This would seem to be a matter entirely between themselves, of which nothing in the books of the Company was intended as a record or can be accurately treated as such. I am confident that the Treasurer must account for his deficiency in some other way."

Mr. BARRETT—I suppose you do not intend to misstate what we claim. You said that we claimed that Governor Page had made no suggestion of his claim until the meeting at that time.

Mr. BURNETT—I so understood.

Mr. BARRETT—Our claim is that he told the Board that he discovered it since the annual meeting, and that that was a false statement.

Mr. BURNETT—Perhaps instead of taking the gentleman's way of now stating it, I am taking it upon Mr. Ballard's opening statement of the case in which it was stated substantially as I have stated it.

Mr. BARRETT—Well, we rest the case on the evidence.

Mr. BURNETT—Well, that is a good place to rest it. And now gentlemen, I will call your attention to a report which Governor Page did then make to the stockholders and which is published in the same pamphlet in which he says this. And it shows the nature of the man, I think. Colonel Walker put that very well, yesterday (I cannot do it nearly so well), as to the relation that existed between Governor Page and Mr. Haven through a series of years, and the friendship and affection that had grown up between them, the trustful nature of Governor Page towards this man, the almost impossibility for him to believe that Mr. Haven could be guilty of a wrong to this corporation such as he has been charged with, and to him. And he adds this pathetic sort of sentence:

"I do not hold myself in any way responsible for statements said to have been made by Mr. Haven to the various so-called accountants brought by the Clements from the office of a Director of the Central Vermont Railroad Company, and elsewhere, to spy out damaging admissions. That Mr. Haven has grossly deceived me, I admit. It was a terrible surprise to me and remains a lasting grief."

That was his true feeling. It was not any triumph to Governor

Page to find that a man who had sat at his table and his fireside, had betrayed his trust. Does that gratify the heart of any true man, to find some one who had walked uprightly in the community; who had occupied positions of trust and honor; who had been leading in good works and a foremost member of the church—to find religion made a reproach by his wrong, to find his friendship betrayed? Do good men rejoice in such things? It is only sad. They love to see their fellow-men prospering and living rightful, pure lives, and to be vindicated when reproach reaches them and when they are assailed. How great the contrast from the way it has been here. Why, gentlemen of the jury, when they thought they had got evidence clinched in here that would destroy Governor Page and make it beyond a question that he had stolen the property of this Company, and that they could denounce him as a thief to you, how they gloated. how they smiled. With what theatrical effect was the evidence put before you that here was $30 at any rate that they would be able to fasten upon Governor Page as a steal. Their countenances fairly glowed in their triumph over the fall of a man who had stood high in your regard. It was the laugh of malicious men, of men who gloat over the downfall of their neighbors. It is the desire to pull down and to assail. The smile of the adversary was so glowing that it was almost sad to disappoint it—the smile that showed its teeth. This adversary who assails here, smiles with his teeth, and of such men beware.

These things give a little of the reasons of this assailing and of the ground-work of this beginning. There was another report issued July 30th, in which more fully is detailed the deficiency of Mr. Haven and the over-issue of 2391 shares. This was twenty-three days after the issue of the former report. It says, "An over-issue has existed since November, 1879, and has been continued." And then it goes on to state that on these over-issued shares, Mr. Haven has been paying dividends. And speaking of this Clement transfer, it says:

"The transfer of 3170 shares to Mr. Clement was not based upon any surrender of certificates, and at first a single certificate, not regularly made, was issued to him. This was afterwards exchanged for eleven certificates, and these again turned in and nineteen new ones given. Two of these last, for one hundred each, were subsequently returned by Mr. Haven, being a part of the 350 spoken of as being placed to his credit, leaving seventeen certificates for, in all, 2970 shares, in the hands of Mr. Clement, for which no basis exists, other than the said transfer."

If Mr. McLaughlin spoke the truth there (their witness) it is the duty of that gentleman, Mr. Clement, instead of being here to prosecute this suit, to walk into the treasnry now held by one of the gentlemen who was a party to that spurious issue, Dr. Mead, and surrender those certificates. There is where this Company can go for something that seems a pretty straight claim.

Then Mr. McLaughlin goes on and shows how the deficiency occurred; that the check books are not records of the transactions; that he (Haven) mingled the Company's moneys with his own; that he held himself only responsible to the Company for the amount called for at any time by his books; that he did not pretend to keep it in bank. That

is what Mr. McLaughlin reported. Talk about Governor Page making up bank accounts. Why, at no time did this treasurer undertake to say that the bank account should agree with his books, says Mr. McLaughlin, "only holding *himself* responsible to answer for the amount that his books called for."

That is what *we* say he should answer for. The books call for a deficiency of $40,000 and odd when he resigned as Treasurer, and there is your deficiency. That is Mr. McLaughlin; it is not Governor Page speaking. I will show you that he speaks the same to-day, after three years of investigation; not one scintilla to take back. Not one bit of variation from that testimony does Mr. McLaughlin make when on that stand. He swears that the deficiency is with J. M. Haven and nobody else. In all of this examination, says Mr. McLaughlin, "Governor Page has afforded me every facility which I sought or required, and evinced a desire to aid in every way to arrive at the exact truth; he seemed to have nothing to conceal."

Is there any other witness that speaks otherwise here? Following this discovery of the deficiency, this suit being brought against these gentlemen to return this stock into Governor Page's hands—that is, he was President, and the board had brought a suit, and sought to have the Clements account for over-issued stock; then they got into a war. The Clements were successful in ousting him from control. They had more money than he. The deficiency of the Treasurer probably, did, more or less, cloud the reputation of the Governor, and lead the stockholders to distrust him, and he was ousted from control and the Clements went in.

Did their wrath stop there? Was that the end of the controversy? No; not yet. A suit had been brought, an injunction suit, which is set up here to prevent Page and Haven from getting any access to the books or controlling these affairs; the injunction as to Governor Page was set aside, without Governor Page ever appearing in the case. Then they appointed a committee to investigate. Governor Page appeared there from time to time, offering to give any information, claiming that he had a claim against the Company, and asking an arbitration.

Now, go back and look at that situation, and bring it all up to your mind. These people, we take it,—I don't know as it appears in evidence, but it is plain so that any one can see it,—had been rivals more or less in business here. When Governor Page was Treasurer of State was anything ever hinted against his integrity? And when his treasurership ended, and the boys came home from the great struggle, with their honors thick upon them and covered with the scars of their long service, whom did they take up and make their foremost representative? They placed John B. Page in the highest place in your State. He was President of the Rutland Railroad, Vice-President of the Central Vermont, and had held places of trust innumerable. And here a great fight had come. The railroad Treasurer's accounts were deficient. The expert appointed to make the investigation reported that it was with him; not anybody else. Not a word at that time except what rested in rumor or the suspicion of these gentlemen against Governor Page. Yet, how did they treat an adversary? Well, they might have gone back to the dark ages, the period of the wars

of the Moors and Spaniards, and taken a bright example from them. And that is, not to stab in the dark; never take an unfair advantage of an adversary; meet a man breast high, to demand only an open field and fair play. Did they meet him so? Did they call him in and say, It is due to you and to the great trusts you have held, and to the people of Vermont whom you have so represented, that you should not be condemned unheard. Was it not at least right that the same justice should be meted out to the President that was meted out to the Treasurer? They called him in and heard his statement. They took him into their confidence and heard his story. But did they call upon Governor Page at all for information? Mr. Sargeant, their own Director, swears that no information was asked of him; but among the first things they do (and that comes out in the testimony) they issue circulars assailing Governor Page through financial channels, trying to destroy his credit and break him down. And that is the way they assail their enemy, that is the way they fight a railroad fight. That is the way they undertake to enforce their claims against him. A man who is carrying on great industries, the Howe Scale Company, the West Shore Railroad, marble quarries, this railroad that he had built up, owner of these Valley Railroad stocks, carrying large debts and large assets, his credit was the most tender point at which they could assail him. It was a thing that if they struck down made him almost powerless as a man, it was like the Moor slipping up behind the Spaniard and cutting a leg so that he could not use it, or maiming an arm and then calling upon him to meet him in open fight with the sword. That is what they were doing. That is the way they did. And that is in the proof here. Think of it, think of it, gentlemen! It seems to me it must arouse your just indignation when you come to think of it. And they succeeded. They were shrewd. To use the phrase of my Brother Walker, they are not fools; they are clever men. They knew where to assail and they have made him grow old, good fighter as he is, ready for the battle when it is fair fight, and always fighting above the belt, open and manly; but it has made him grow old. You have seen him pass along your streets here sometimes with his sad face. Sad, not for this claim, not for what they would bring against him here; he don't fear you, gentlemen, and I don't fear what your verdict will be; but it is because they have charged him with fraud and crimes, and have assailed him in the court-room; and counsel have come here and attacked him as though he was some prisoner that had escaped from the penitentiary. That and the destruction of his credit has bowed his head. That makes people old and long for the end to come and for the time to cross the dark river. And that is the way the fight was carried on. That is where it began. That is the way it has been conducted.

When that circular came out, what did he do? You have heard of a libel suit that has been spoken of here. Not a secret attack on credit but a demand to come into the courts of this country; Governor Page saying, I will make you answer and see where the fraud is. Have they met it? Has it been tried? No. Perhaps not their fault, but it has not been heard. That is the way Governor Page fights his fights. That is the

way he meets their slander. He came into court and was ready to meet this suit from the first day. It is public record, it is public history, that from the first day he has been ready to meet their claim here before his fellow-men and before this court. He is trying to make them answer before his fellow-men in this libel suit.

But if they could break him down, they thought, if they could destroy his credit when he was carrying this great burden of property and of public enterprises, he would not be able to fight this fight. It is an expensive business. I do not come here for a trifle to work for this man, although I have a strong friendship and affection for him that has grown up in nearly twelve years' service for him. I know the man inside and out; and I would come here were there not a dollar of pay to fight this fight. But it has been at great cost to him for all this labor of preparation and all the work that has been required to be done; and he is trying to carry the burden. These accounts stretch over twenty odd years and cover some twenty-three millions of expenditures, hundreds of thousands of checks and acceptances; certainly reaching up into the tens of thousands, that had to be investigated. Three and a half millions of dollars of them hurled at him without a word of warning, and saying, you must answer every one of them. That could not be lightly done. That had to be accomplished by months of labor, and by skilled men employed and paid, and who must live while they work. But if they could crush him financially so that he could not carry on his fight, they proposed to do so. And perhaps they would have succeeded had it not been, gentlemen, that there are men in the old State of Vermont that love their old Governor, and are ready to reach their hands into their pockets and help him, and said to him, "This outrage shall not go on without your having a chance to meet it; you shall fight out your fight if we have to help you through it." Perhaps that may be so. I do not know. That was a shrewd move on the part of these assailants—that was a prime move; it was the move of a man who smiles with his teeth. He can grasp the hand of a man and smile, but his teeth will show every time he smiles.

What next? How did they begin the fight?

This suit was commenced, I think, in February, 1884, and in the following May they set out these specifications, covering nearly $1,100,000 of claims. I am not going to stop to read them all. They are in brief—

First. The Valley lease of 1871, the settlement made by the Directors of that matter under the old administration of the lessees, $31,000 and $63,000.

Second. Balance standing on the books as the wood-account item when they settled the running and operation of that road, $43,000.

Third. An acount with the old Bellows Falls Station, for building it, that had not been settled for. They sue him for that.

Fourth. Some accounts that had been passed over under the supervision of this committee who had supervised the accounting, that they were not able to collect: the Rutland Railroad Company, now making claim against these Trustees; the very sort of things they had given them indemnity for, and then got them to surrender their indemnity; and then they turn around and sue them for it.

Fifth. Next, $1600 of a balance that they were not able to collect from the Bennington and Rutland Railroad.

Sixth. Loss on some bonds.

Seventh. Amount arbitrarily credited to Trustees in settling accounts.

Think how many of these claims have dropped out and been withdrawn; most of them withdrawn by plaintiffs themselves, ashamed of them.

Their own witness swear this item is a mistake in adding up figures. They sue him for nearly $2000 on this item. Defendant must dig them all out, every one of them, taking weeks of labor.

Why, gentlemen, some of you, I take it, are men of affairs, and have had considerable business transactions. Supposing you were suddenly called up and had a suit brought against you for something that had happened ten or fifteen years ago. You would say, How can I get at it? And you would labor for days and weeks to dig up a single transaction; papers, some of them destroyed, and people dead, and here they come with that sort of thing.

What is the next? Loss on Lebanon Springs bonds; some of the assets that were turned over by the Trustees and the Company have not realized as much as they stood for on the books of the trustees.

Eighth. This is an item of $27,000 that the Trustees had credited on their books as being the estimated amount of property on hand and which was afterwards turned over on this estimate to the Vermont Central. After the appraisal they had to charge back the over-estimate that they sue him for.

Ninth. Amount of interest upon indebtedness of Trustees; the very notes which the Rutland Railroad Company had taken from the Vermont Central and had got discounted. They want to make Governor Page pay that discount.

Tenth. Shop stock that did not turn out as well as they anticipated.

Eleventh. Interest on trust funds. Going back to make him answer from 1864 to 1871 for every dollar the Governor had had in his hands as Trustee, and make him pay interest on it—$75,000. Think of it, gentlemen. That is the kind of thing they fire at him.

Twelfth. Half of Governor Page's salary during this time. The very thing that my friend, when he opened, said there was no question but that he was entitled to.

Thirteenth. The Whitney matter—seventy-five thousand dollars there. That Whitney settlement will come up futher along in this argument.

Fourteenth. Then here is a general item—"Profit realized by said Page out of his trust as President in the matter of the Smalley mortgage, $100,000." That was all the little claim they made against him there. Going to make him pay the whole value of the mortgage. How did we know what they were going to claim? And when it is whittled down it comes to be a question whether for the 300 shares of stock he received for his interest in the Smalley mortgage—an interest he owned before the plaintiff Company came into existence—he must answer at the market price or what he actually got. He got less for it than it actually cost

him. That item claimed is $100,000—well, that, the Court has stricken out.

Fifteenth. Seven-per-cent equipment-bonds issued under the mortgage—twenty-five thousand dollars for that. And they came in here and made a motion to increase that amount; that was not large enough. And that is one of the items which the men who bring this suit have these same things in their own pockets. Think of it.

Sixteenth. The Burlington Steamboat Company, $112,000. That is all they wanted him to draw his check for on that; the history of that being that he paid $10,000 in there, and it has been developed before you that he paid perhaps $2000 more, and he got $11,800 for his stock in that Company. There was a possible profit; nobody knows. No proof here to show (they had not anything to found it on beyond that) that there was a possible profit of $1800. How do we know how it stood? We had to go back and hunt up the history. Every item gone into fully and met. And his Honor struck that out.

Seventeenth. Amount wrongfully received by said Page, as an individual, while President of the Rutland Railroad Company, of equipment bonds. Well, that is the far-famed $19,000 item that they withdrew themselves, and that their own witness, McLaughlin, after two years of investigation, said there was no mark that Governor Page was in any way connected with it. It proved to be simply an item, so far as we can get at it, that enabled the treasurer to cover up that much cash. That is all there is of it. There don't seem to be a special steal in that item; but it enabled the treasurer to cover so much cash. That was a shrewd way of doing it. No transaction to base the charge upon so far as Governor Page was concerned. Shall men charge their neighbors falsely, without proof, without investigation, and Vermont jurors vindicate them? Some day you may have to stand before your fellow-men; and you will say, Right is right, justice is justice. We appeal to you. Do not fear to declare it. Fearlessly we appeal to you. "Wrongfully received by said Page." Does that sort of thing herald to the world that he in that position wrongfully appropriated $19,000? Why, these gentlemen, lawyers and all—and I say it thoughtfully—who will make such charges against their fellow-men, without evidence to support it, without proper investigation, ought themselves to be held personally liable for the wrong. It is not lawyerlike, and it is far from right. There are some things that are right between lawyer and man. Professional privilege does not warrant men in going to such lengths. There it was plain, and their own expert said Governor Page was nowhere connected with it; not a footprint. Withdrawn by themselves. And yet we must meet it; we must bring our experts here and go through these books from end to end to see what it means, see where we can run it out and run it down, or we may be caught here and be made to answer for a mistake. As Colonel Walker said yesterday, the $30 item illustrated many things; and it will be considered thoughtfully in your minds. There, when their witness left the stand, was a clean, clear indication of Governor Page having stolen that $30 in the way that they thought there was no possibility of our escaping from. Think of it. They had traced that money as being transmitted

to him, the check made payable to his order, traced into his bank account. And there they left it. He had forgotten it. He might have been sent to the penitentiary; certainly could have been indicted upon it. Is it any wonder that they can go to the grand-jury room and get Governor Page indicted if they take that sort of thing? That is where they left it with their witness, Haven. I have no doubt they worked in good faith. Their eyes have become so jaundiced that everything they can trace to Governor Page they believe to be wrong. They believed that was a steal. Now, I say, had it been there left, had we been so unfortunate as not to be able to follow that out and show where that money had gone, not only would it have been a prima-facie case made against us, but it would have made a justifiable case to base the charge that Governor Page stole that money, and for all time that stigma would have rested upon him. And yet every single item that has come out in proof in this case, gentlemen of the jury, might have stood in that same way had we not investigated to the bottom, and been prepared to prove everything they brought against us. They had given us no hint of that item; not a suggestion, not a thing. It came out like a thunderbolt. We said to Governor Page: Go to work and hunt up this; what does it mean? He said, I don't know; I will go at it and see; I know I never have taken this Company's money. But whether we could prove it was a question. The evidence was doubtful; think of what might have been its consequences—the mere accident of the destruction of these papers. But we found it, we found the facts, and they showed that he had accounted for the money, that he was not a thief. And I won't call anybody else one, but the money went into Treasurer Haven's private bank account, as you have seen.

Eighteenth. Dividends on the Addison stock. Not one dollar of it have they proved into Governor Page's hands, but proved it directly the reverse. If there is any possible loss there, it is not for dividends. Those were paid to Hickok, the person entitled to receive them.

Nineteenth. "Amount received by Mr. Page while President, whether in bonds or cash, in exchange for the Company's dividend scrip, $100,000." It turns out here that he did just what all men have a right to do, and what almost all the men connected with the Railroad Company did do; that he did buy this scrip, a security of the Company on sale in the open market, and exchanged it for the Company's bonds as authorized by resolution of the Board. Governor Page had done that. A benefit to the scrip-holder and no wrong to the Company. And yet they say he shall answer for that to the tune of $100,000. He actually made with all the money invested, according to all the proof here, a little over $3000, out of all the money he put in it, and out of his time and exertions in buying it up. We had to look up all this transaction, which took much time and labor.

Twentieth. Amount going to Governor Page in the Collamore and Simpson suits—some $19,000.

Twenty-first. Amount of Charles Page note, which Governor Page guaranteed. Proof shows there was no guaranty. That the Court struck out as not being a valid claim.

Twenty-second. Amount of proceeds, appropriated by Page, of five acceptances, 180, 181, 182, and 185 or 187, and 1430—$44,000. Now we will show you, when we come to these items, that all that has dropped out of the case. There never was a time, never was a moment that Governor Page was not ready to sit down with the present directors of this plaintiff Company, and go over his books and admit the use of everything that he had had, and if he should pay anything, wanted to do it if it was fairly due the Company. The idea that brother Barrett suggested that Governor Page should turn over to him, with the spirit he has exhibited —he and Mr. Clement—all his proofs; that he should come in there before him and he would turn himself into a court, an impartial, unprejudiced tribunal, to examine Governor Page's claim. That would be a fine scene. I would like to be present at that. Now, every item of all these pages of testimony of the slightest relevancy as a claim against Page is in these four items. Plaintiff had a right to investigate these. There was one of them (I think acc. 180) of which Governor Page had had the proceeds and the Company had paid. That was all. They had a right to ask him how that was done, and to say to him, We want to know how your account stands with the Company. That is all there was in all that list; and that they had a right to investigate. It was a question of taste whether they should call upon him and hear him; a question of the ordinary treatment of men. Perhaps on that, if they chose, they might have based a suit. But that is all—all of this weary, dreary lot.

Twenty-third. Amount of interest on funds of the Railroad Company wrongfully diverted to his own use while President. I would like to have the jury give a guess how much they have put down in this item. Now, after all the proof is in, after they have made their investigation from 1883 down to January, 1884, how much do you think they claim for interest for money which Governor Page had in his hands more than he had advanced to the Company? That item is $175,000.

Twenty-fourth. Next, Page's check—$7000. I don't know which one it is, and I don't care. I don't know whether it is the check of the Brandon Manufacturing Company that was exchanged over night for the Railroad Company's check, or whether it is this mythical check that Haven says he made up, and that rested at bank there a day or two and then was destroyed. It cuts no figure in this case.

Twenty-fifth. Amount of other items, etc. Anything that they had forgot to charge they bring in under claim for $50,000.

Twenty-sixth. Amount of any matters of profit appropriated to himself by said Page in his trust relation, etc., $50,000. Something more that they might have forgotten.

Now, that was that suit. Only think of it—$1,068,000. And that did not quite satisfy them. They had not put on Page quite labor enough; and so in December, six months afterwards, they put in specifications in addition to those already on file, 313 items, ranging from $5000 upwards, and amounting to $3,515,000.

They have called upon him to answer to all this, to give a clear account as to all these matters. It has been done. Only men of herculean frame and iron will and great memory could ever have done it,

could have dug out the facts and met these things, item by item, and inch by inch. When they brought forward their checks and acceptances, we were there with our proofs. Only 313 of them—only $3,515,000.* Is that a light thing to do? Is that a light labor? And is it a matter that they ought to put upon a man lightly?

That was the case they started with. And what has been done? It reminds me of the old story of the joke the boy played on the hen. His mother sent him out to set a hen, and he put sixty or a hundred eggs under her. When he came back she asked him: "Why, you did not expect to have her hatch out so many eggs, did you?" "No, I didn't expect she would hatch any of them out, but I wanted to see that old hen spread herself."

Now I think it was that kind of a joke that young Clement played on Barrett: he knew Barrett was ambitious and he wanted to see him spread himself in this suit. It was rather rough on Barrett, because he is not made up on that plan—to spread himself much. He might have lengthened it out, and he has lengthened it out about nine weeks; but to ask Barrett to spread himself is cruel.

Well, the lengthening would have been a little like a despatch that Lincoln sent to one of his generals. When Pope, I think it was, was describing the army of the enemy in front of him as stretched out over a great distance, "Well," said Lincoln in his reply, "a thing that is as long as that must be thin somewhere; you better go through it." Now we find that this long bill of specifications was not only thin at some point, but that it was thin its whole length. And we have been going through it, and we have always come out on the same side, always come out on our side.

Now we have gone through this thing and I think we have pretty well punctured it. It is true that this old hen in spreading herself, or this young man in spreading himself, has hatched three eggs. Three eggs have been hatched. And they are about all that my mind dwells upon in the case, until we come to the question of accounts and the items that we say are fairly put into the case and made an issue. And what were they?

Why, the first was this: With vehemence and great earnestness (and perfect good faith—no fault to be found with it) these gentlemen demand of Governor Page, "Did you ever use any checks of the Rutland Railroad Company in payment of any Howe Scale matter?" "I don't know," he said, "I can't recollect." "Do you know a man by the name of Gilbert"—as though he was a criminal, to be driven right into the doors of the penitentiary—"*do you know a man by the name of Gilbert, agent of the Howe Scale Company at Chicago?*" "Yes." "Didn't you pay him the money of this Company?" "I don't remember any such transaction."

And right here, gentlemen of the jury, let me call your attention to the fact of the continued complaint that has been made that Governor Page did not answer promptly, that he didn't bring forward his memo-

* See Appendix for list of second specifications.

randa, and that he answered so often, "I don't know, I don't remember." Well, gentlemen, he answered the same way where the subsequent proof came out in his favor that he did in any case where the proof might come out against him. He answered substantially the same way as to the $30 item and as to the Gilbert matter—"I don't remember." Think of how this case began; without one word of warning, without anything in the pleadings to advise him what he was to answer to, be prepared for, except simply a number of acceptances and amounts; such things as the Gilbert matter, such a thing as the $30 item, not in the specification at all, innumerable things which he had to dig out, and which no hint or suggestion had been made about. He knew he was right, and would be able to meet any possible proof they might make against him. I do not know but it was a shrewder move than I am able to see, calling Governor Page to the stand to open their case; it might have been brother Barrett, and it might have been the gentleman with the smile.

Mr. BARRETT—It was in fact Governor Stewart.

Mr. BURNETT—Well, it may have been Governor Stewart; I don't know. Governor Stewart has not come here to father it. I do not believe he will want any of your work put on him in that way. I say that it is a strange method; it may have been a very able one, to call Governor Page suddenly to the stand and then commence questioning him about such things as those that he did not have any notice of and could not possibly have any full knowledge of without careful investigation, unless he had been omniscient; and then attack him and insult him because, first, he could not remember, and second, because he did not want to produce his papers, that under our advice were his private papers that he was not bound to produce. And what made them madder still, was that when they did get at them, they hit them square in the face, and were not what they expected to get.

Now then, one of the three eggs that they hatched out was this Gilbert matter. And after my brother Barrett had seen the little paper that Governor Page put in with the checks in answer to the question about whether any money had ever been paid to Mr. Gilbert, and how it was paid, he dropped it as though he had taken hold of the hot end of a poker. It didn't suit him at all. And we have not heard of the Gilbert item from that time to this. It turned out that he had advanced to the Railroad Company out of his own pocket $6326.58, December 1, 1877, to pay an acceptance of the Railroad Company, and he received, three days afterwards, these checks which the Railroad Company gave him to repay this advance, which he had a right to use as though they had been dollars, and with them he paid some obligations of his own, or of the Howe Scale Company, to Mr. Gilbert. We haven't heard of that egg since. It wasn't exactly a swan that they hatched out, but it was something with a sting. They could not convict their neighbor of wrong, and they have been mad ever since, their wrath fairly boiling over.

What was the next egg hatched? And you could see this smiling gentleman with the hunting instincts hunting for days to nose out something. We find fault with these gentlemen. If it had been an open,

manly, square fight, to find out who was indebted, whether it was Governor Page that owed the road or the road owed him, not one word would have been uttered by us iu protest. But when they knew they were digging for things that did not bear on that question,—the only question at issue in this suit,—and that they were only bringing to the attentiou of this jury for the purpose of prejudicing their minds, we justly find fault with them.

The next item which the resident director dug out with that hunting nature of his was the exchange of checks between the Brandon Company and this Company for a uight.

Perhaps there were four eggs: one that brother Walker referred to vesterday, where they had found his indorsement on an acceptance of the Compauy as President of the Bank, and they thought they would be able to show where Governor Page had done something wrong towards his own bank. It did not affect them. That was to give color. Now, supposing these two great corporations, for a night, desire to accommodate each other with $7000, is that a thing that is going to prejudice you against your neighbor when he knew that the Brandon Company was going to repay, and he would see to it that they did repay it? And then there is the question of whether the Brandon Company did ever use that check. It was takcn up the next day. That was the second egg that was hatched.

The third egg was the $30 item. That was a sweet morsel for them, and they rolled it under their tongues with great relish. I wouderd what was coming, clear through the trial and up to the last. And when their $1,100,000 had disappeared, and three and a half millions more had gone into smoke, this egg was left. Aud when the $30 item disappeared, my brother Ballard thought the chair was not there when he went to sit down, and he heard something drop.

The whole case was gone when the $30 item was out. You recollect the story of the Irishman who fell out of the second-story window, and when Mike asked him whether the fall hurt him, he said, "Not a phwitt; it wasn't the fall that hurt, it was the sudden shtop." It was the sudden stop to their case that hurt my brother Ballard, and not the fall.

Recess.

AFTERNOON SESSION.

When we adjourned previous to dinner, I had given you the general characteristics and features of these first specifications that had been filed agaiust Governor Page, and I had gone over and tried to present to your minds some of the larger features of this case, the outlines and forms and the nature and motives of its being. It becomes my duty now, gentlemen, to take up with more particularity the specifications. And I shall do that very hastily, and move on as rapidly as I can to what I deem to be the issues that ought to have been tried, and tried alone, in this case, severed from all this material that has come into the case, but having come in, had to be met, and we had to present to you as accurately aud as fully as we could the motives of action and the reasons operating upon the minds, as we conceive it, of the parties who have brought this suit.

In the specifications the first that is not ruled out is specification No. 2, one with which you are all familiar. That is the $31,000 item, the claim of profit in operating the Valley Road. Colonel Walker covered this so fully that I shall have little to say about it, and I shall move along hastily over these several items, making only a suggestion or two in passing. My accomplished friend, and eloquent and able lawyer as he is, Mr. Ballard, has drawn into your minds as a part of the consideration of this second item, the first item of the specifications, which, as we gathered from your Honor's notes in passing upon the questions of law that were discussed to your Honor the other day, had been eliminated. That is our understanding of it. How far appropriately the first specification may be discussed as bearing upon the second, I am not prepared to say. It perhaps may come in, as my brother Walker expressed it, as a side light. My honorable friend here so used it, and I don't question the propriety of it. We do not understand that it is before you, gentlemen of the jury, for your action. You will recollect that that $63,000 item, the first specification, was the item for the improvement of the equipment of the Valley Road by the Trustees of the Rutland Railroad Company, while the lessees were operating the Valley Road and before it was turned over to the Vermont Central. They had put repairs upon that equipment, at the expense, if you will, of the Trustees of the Rutland and Burlington Railroad Company to the amount of some $63,000. In discussing this question the other day to the Court, it turned out in regard to that first specification, $63,000, that these Trustees, when they were turning the property over to the Rutland Railroad Company, and their accounts being examined, the Directors having appointed a committee, did not leave that matter alone to the committee to be disposed of, but the Directors themselves took up that question and considered it, as to what should be done with that item, that expenditure upon the equipment of the Valley Road. It was a lease, as you know, which had been made in the interest—do not be misled by this—in the interest of the Trustees of the Rutland and Burlington Road, to give them a southern outlet, so that they should not be cut off in their communication to the south, in building up this great through traffic. This is the only question to be submitted to you by the Court, whether understandingly with the beneficiaries of these Trustees they had taken that lease and were entitled to whatever they could make out of it; whether it was a burden to be carried by the lessees, and the profits also to go to them. And as your Honor said, "Were the lessees to have the profits by arrangement understandingly entered into in advance?" Now the only proof in this case upon this item, the only proof that you, gentlemen, under your oaths can find upon that item, is the testimony of Governor Page, and I think one other witness (certainly no conflicting testimony), that they, the Trustees, had applied to the bondholders before they took this lease. And you remember at that time this Rutland Railroad Company was not in existence. These Trustees were operating the road under the first and second mortgage bonds in 1865 when this Valley lease was taken; for the bondholders of the first and second mortgages of the old Rutland and Burlington Road. Now, then, the only persons that could consider the

question, that could understandingly allow them to take this lease, were these beneficiaries, these bondholders, for whom these Trustees were acting. The only proof upon that question is the testimony of Governor Page and I think one other witness, and no conflicting testimony, and they applied to the mortgage bondholders under their trust to be permitted to make this lease under their trust for their beneficiaries, these bondholders, and they refused. Now, can there be any doubt, when they refused to allow this lease to go into the trusteeship, they then had a clear understanding with them that if they took the burden, the risks, and liabilities which the beneficiaries were not willing to assume, the Trustees were to have any profits which might be realized? These gentlemen, these Trustees, with their associates, put up $100,000 of government bonds as security. When the Vermont Central, its great rival, undertook to drive them out from the lease and cut off their connection to the southward, these people who controlled the Valley lease said to Mr. Page, "We want security if you take a lease." And thus they compelled them to put up $100,000 in goverument bonds as security. These gentlemen did not shrink from that responsibility, but met it. It had to be done. This property, this Rutland Railroad, was worthless unless it could get an outlet to the south, and the Vermont Central would wreck it otherwise. These gentlemen put their hands in their pockets and took the risk.

Now, his Honor will charge you (disregarding this question of the $63,000 item) that if right there the beneficiaries understood that they had refused to allow these people to take that Valley lease into the trust, and understood that they were to bear whatever loss accrued, and were entitled to whatever profit should accrue; and that that was the understanding and arrangement, then they would be entitled to that profit, disregarding this $63,000. If that was the clear and fair understanding (and you must so find upon the evidence), then you must find for us on that item.

As to this $63,000 item. "Art is long and time is fleeting"—to use a quotation (I did not mean to; I apologize)—I must hurry on, but it does become necessary to say this in reference to that $63,000 And let me get that into your minds clearly. It stands right on the face of the resolution that while this debt stood in favor of the Trustees, an outstanding obligation in favor of the Trustees of $63,000, which in the accounting would pass on to the Rutland Railroad Company, and they would have that claim—that is true—the Directors of the Company seeing this $63,000 item on the books, said—what? Why, when you lessees took the equipment of the Vermont Valley Road, it was almost worthless; you put on new cars, repaired old or bought new engines, and brought the road up to first-class condition; we never should have been able to make this lease to the Vermont Central Road had you not done this. Not only that, said they, which has resulted to us in this $565,000 a year lease, we could not have made it, if you gentlemen had not done that and taken the personal responsibility—not only that, but there is this money in addition, said these Directors. When you took that equipment, the appraisal was made of it; and we being the assignees of your

lease are only bound to turn back to the Vermont Valley Company that equipment at the value at which it was appraised when you took it. That is all we are bound to do. The improvement that you have put on that equipment we have now had an appraisal of, and it increases just $25,000. And we turn it over under that appraisal to the Vermont Valley Railroad, and they are bound to turn it back to us at that advanced appraisal, and when we turn it back to the Vermont Valley we get the benefit under their lease of this increase of value. It is just so much money in our pockets, and we should allow you that. Was not that fair? That is what these Directors said openly and squarely on the books of the Company. They said more than that. They said that on this shop stock consisting of iron and wheels and wood that we have turned over on appraisal to the Vermont Valley Company we have been paid $7000; you should be allowed that. In the division of mileage tickets, there have been used, they said, over your road, and have come into our pockets, between $3000 and $4000; you should be allowed that. And so they went over and figured it all up, and said, it is fair for us now to allow you these many things, and they wrote them off, and it balanced the $63,000. And brother Barrett rose to his feet and said about that resolution that recited all these things, you need not trouble yourself to prove these as being fair and just: "I admit the truth of what that resolution states." That closes their mouths. And that is what my associate, brother Page, very properly called brother Ballard's attention to when he was talking about it. You cannot come here and admit a thing and then rise before the jury and attack it. That stands there as a reason—a full and fair consideration for the action of plaintiff's Directors. This Company acted upon that, and now this same corporation come in here and try to set it aside. We say that that $63,000 item has nothing to do with the $31,000 item, and the Court has thrown it out of this case. I have only tried to show you what it might have to do with it as a side light. When we were entering upon the proof, Mr. Barrett said, "We concede the truth of the facts stated in that report and resolution. It seems to us therefore, on that $31,000 item, you will have no difficulty in finding, under the Court's instructions to you, that the lessees were to have the profits, by clear understanding between themselves and their beneficiaries, their *cestui que trust,* at the time or previous to the making of that lease."

The next question that the Court submits to you is, Was this included in the accounting?

I do not know that I can say any more, your Honor, than I have said on that question of law. I think we have been over it pretty fully. It has seemed to me clear, and I think the tendency of your Honor's mind is in that direction, to hold that that did enter into the accounting. No doubt it is true, as Governor Page said, upon a fair statement of his testimony, that that had been charged off, that it had been settled up before the master's report came in; that does not decide that it had not come into the accounting. Mr. McNair has found that it did enter into the final report of the master. It must necessarily be so. It would not be reasonable to say that an accounting is simply an examination of a trial-

balance, to see whether there are so many outstanding liabilities and so many assets or so many claims of the Company. That would not be an accounting. But the accounting here was the accounting of the Trustees on the whole matter of their trust. Advertisement was made for that purpose, to call in all those that had any objection. As Daniels says in his Chancery Practice, in an acconnting it is for the parties themselves first to sit down and see how many things they can wipe out, and then the master hears only the things contested; but the rule of law is that those things not contested are *res adjudicata* just as much as those things contested. The accounting covers the whole body of the trust. I do not see any escape from this. Then these persons that they were carrying it over to were there standing with them, parties to the accounting, their committee present, clothed with full power both of the directors and stockholders.

I understand that your Honor asked Colonel Walker yesterday (and I was out when the question was put) this question, whether that was such a proceeding as to make the accounting conclusive and *res adjudicata.*

Judge VEAZEY—I merely stated to him, in response to some suggestion that he made in stating your ground of claim, what the ground of claim was on the other side as set forth in their special requests which you have not seen.

Mr. BURNETT—Before commencing the trial we had carefully considered that whole question, and thought it was very clear; and we understood from the opening and in the discussion and trial of this case, all the way through, that it was treated as a conclusive acconnting. The only question was whether this item was in the account.

Judge VEAZEY—They put the whole thing in their request.

Mr. BURNETT—That I had not heard of. Let me make one suggestion in regard to this we may desire to cite some authorities to your Honor.

Judge VEAZEY—It will not be necessary for you to open that point.

Mr. BURNETT—Very well. I am glad to hear that. Now the next item is the Whitney settlement.

I do not propose to say very much upon the matter of fact or law upon the Whitney settlement. I do not believe this jury will have any trouble with it. The Whitney settlement, so called, was simply this, that after all the first-mortgage bonds of the old Rutland and Burlington Road had been retired or converted into the preferred stock bnt about $67,000 (I am stating the figures roughly), and all of the second-mortgage bonds, I think, but about $75,000, of which Whitney's bonds composed a part, he came at the Company and said: "I do not propose to take common stock which other people have been converting their second-mortgage bonds into, but I must have preferred stock or cash for my bonds. I am advised and I believe"—I do not mean that there is any testimony to this exact language, but I am stating what he might very naturally have said —"now after the first-mortgage bonds have been retired my second-mortgage bonds become a first lien on this property, and I want you should give me preferred stock or pay me the face value of my lien." Well, there was not very much to be said in answer to that. I do not know what answer I could have made, except to have settled with this man the best I

could. If the Company did not settle, what could he have done? He could have sued on the coupons and foreclosed his mortgage and sold out this railroad. It was a lien as valid as a first mortgage. Not only that, but he said, "I won't allow the Trustees to complete their accounting." I think it was in March, 1871, that he filed his objections, after they had entered into this lease to the Vermont Central Company. Perhaps it had been then turned over; February 5th the property was turned over. What did the Trustees say and do? They did not care very much. There had been voted to them by the Directors and the stockholders an indemnity (and there is a thing for your Honor to consider here as a matter of law)—an indemnity of 1000 shares of preferred stock and 1000 of common stock, and the notes and money received and to be received of the Vermont Central under that lease. They—the Trustees—had a right to hold it all as indemnity for any claims that should be made against them. These Trustees were protected individually; they need not worry, the accounting might be delayed indefinitely. This Rutland Railroad Company could not get a dollar of its rents until their accounts were settled. It has been stated here that Governor Page procured the withdrawal of these objections; that Whitney's objections were bought off. Governor Page had indemnity in his pocket, and it did not matter to him whether there was a settlement or not. Who was it that was interested in having those objections withdrawn? The Rutland Railroad Company, not Page.

Now, then, if your Honor please, after the Company had settled with Mr. Whitney, this Company, by a committee appointed by its Board of Directors, competent and able and honest men, with no claim of fraud in the transaction, Page in Europe, after that settlement and after the Trustees' accounts have been confirmed, and the Trustees induced to surrender their security, now they come back at them and say, "You shall pay the difference between common and preferred stock which General Whitney got." That is this claim. Think of it! It comes as near an attempt to perpetrate a fraud by legal machinery as I ever saw undertaken in a court in my life. Are they not estopped from making this claim while they hold the indemnity they induced him to surrender? And what is the only scintilla or scrap of evidence they have found in their examination of this case as to this item against Page? My ingenious and eloquent friend has wrung these dry rags of testimony to get drops of evidence; and they are mighty thin drops. What did they get? There is a paper, without date, partly in Governor Page's handwriting and partly in somebody else's. I want you gentlemen to take it and look at it. It has upon it various figures that undoubtedly related to the proposition either that had been made to Whitney or that Whitney had made to somebody. It is not true that that paper conclusively establishes or even presumptively establishes that Governor Page had been carrying on negotiations. Supposing a man comes to either one of you, and you are the head of a mill, of a manufacturing establishment, of a great farming interest, and suppose he says to you, "I have a mortgage on a piece of your property, and I demand that it shall be paid within a given time." It may be that there is some discussion about the property not being sufficient to pay the mortgage; and you have said to him, "I think that my people

who are interested in this property would be willing to pay you so and so;" and he says, "I will take down these figures." And you are suddenly called away, and a committee is appointed to take charge of it, and you turn that paper over to them. I am asking whether that is the probable way that that is made up. This matter had been discussed and brought up to this point. Or it may be, when Governor Page came back, this committee came to him and reported so and so, and he sat down and wrote out as he understood the propositions to be. The paper is found in the railroad offices. The committee is above him, and charged with authority to settle it. The resolution directs them to confer with Judge Prout, their counsel, than whom no man in the State of Vermont or any other State, I venture to say, stands higher for purity of character and for ability. They are charged to confer with him in the execution of this matter—above the President, for this committee was specially clothed with the power to settle this matter with the Board of Directors. And this matter was closed, and that indemnity surrendered. If any loss did accrue to any one, does it lie in the mouth of this Company now, after they have enjoyed the benefit of that settlement, after they have taken up the indemnity held by the Trustees, after they have got Whitney's bonds and still hold them, and no tender back—does it lie in the mouth of this plaintiff Company to come in here and assert this claim? Perhaps some advantage did accrue to Governor Page. Does that make any difference in the situation? Are they not estopped now in law from asserting any such claim? That is a matter for your Honor to consider. And can they bring this suit without tendering back this indemnity and placing the parties in *statu quo?*

I pass from that item. I come now, if you please, gentlemen of the jury, to what is called the Addison dividends item. I shall dwell but a moment upon that. There is nothing here to be considered. It reminds me a little of the story of the impatient father, or rather, I believe it was the impatient mother, who bade the father to take up a crying child and punish it for yelling. The father took it up, and looking it over said, "Why, there is nothing here to whip; it is too small; wait until it gets larger." Now, unless there is something larger than this $4000 item, we need not spend much time on it. And it is only this: they charge in their specifications the receipt by Governor Page of dividends on so many shares of Addison Railroad stock; and they come here and prove that for five years, on 300 shares of Addison Railroad stock, the dividends were paid to one Hickok. They deliberately and carefully, and with a patience and assiduity that is worthy of all commendation, prove that Governor Page never got one dollar of these dividends. That is all there is of it. Under that item in this specification, I think the Court will say to you that unless you can find some testimony that Governor Page received these dividends, you cannot give any verdict against defendant under that specification. The proof stands uncontradicted that Governor Page never received a dollar of these dividends, or had any interest directly or indirectly in them. The record-books of the Addison road show this. Mr. McLaughlin has sworn to it.

There is another aspect of the case that may have some bearing; and

I may as well speak of it here. It is the question of whether the $12,150 which Governor Page paid into the bank of redemption in January, 1879, were the proceeds of this stock—300 shares Addison stock sold Hickok. There they claim that there is conflicting evidence. That has not the most remote possible bearing on this specification. He paid the money in there; and whether it was the proceeds of this stock as he has credited and debited it does not make any difference, because if he is not entitled to it as credit upon that Addison stock, he is entitled to it as credit for something else; and we have not charged it anywhere else. Now, we are entitled to the credit for this reason: that we went and put the stock, when they complained about it, back into the treasury. They are not entitled to their stock and the money both. You cannot both eat your cake and have it. And I do not understand that I differ with my friend Ballard about this. I think he stated it fairly. He did not claim anything on that. They do not claim that they are entitled to both the stock and these receipts. They could not claim any such thing in common-sense or law, and it does not make much difference which way you deal with it. If they should undertake to claim, and brother Barrett should convince you by his ingenious arguments that they could not find the $12,150 to be the proceeds of this Addison stock (which I do not believe), then we say there is nothing else—no other receipts, no other acceptance, no other rent—nothing else that it comes from. Governor Page paid it in there. He testifies he reported it by letter, and informed Haven when he came home where it came from. The plaintiff Company has been credited $12,150 as being paid into the bank. Now, if you do not credit it on the Addison stock, then, gentlemen of the jury, you must credit it on something else, and you must give Page interest on that $12,150 up to the time when you give judgment, and then you must charge him interest on that Addison stock; so that one hand just washes the other. That whole matter comes in under the question of general indebtedness.

We do not dwell upon this matter of the Addison dividends, because we think it has dropped out of the case by the admission of the opposing counsel and the ruling of the Court as we went along. Mr. Barrett said, on page 1347, speaking of Governor Page:

"We do not claim that he received those dividends."

"*Q.* Did you have anything to do with their payment to Mr. Hickok?

"*A.* Nothing at all."

That is where they stood. Then Judge Veazey said: "Your statement leaves it that the dividends were paid to Mr. Hickok; if that were so, you cannot recover in this case against the defendant."

We do not need to spend time over that.

The dividend scrip which I had marked down upon my minutes, under the intimation of the Court, I do not propose to touch at all.

Judge VEASEY—I think that there would be a question as to that, as to whether the defendant did his duty in buying in that scrip with funds available to him for the purpose, in the treasury of the Company.

Mr. BURNETT—I do not know whether I catch your Honor's meaning. All the scrip he got was this: first, what he got on his pre-

ferred stock, and, second, that which he went into the market and bought with his own money.

Judge VEASEY—But did he do his duty when it was for sale at a discount, and with money available for this purpose, or did he neglect his duty when he bought it in with his own funds and turned it in to the Company to his own profit?

Mr. BURNETT—The only proof on that subject is that for a series of years the Company was not in condition and had no means to buy scrip. He had this scrip. As I understand it, it is convertible at the option of the holder. I do not think there is anything in that matter. I shall pass on. If your Honor holds, as I understood day before yesterday, that this scrip was in the nature of public securities of the Company that he might deal in as with the bonds—if that is so, there is nothing left under the proof. We are perfectly willing to leave that whole matter without a word, under the charge of your Honor to the jury. The fact is suggested to me that these bonds that this scrip was converted into were not worth par. Thus it was only converting one security into another.

The next item I come to is the Collamore and Simpson specification. It is a weary sort of work to go over these things over and over again, and I do not think I shall do much with it. There are a few leading features that you, gentlemen, want to keep in your minds. You cannot carry figures and details. There is a leading fact that I have tried to place in your minds this morning—that in 1868, 1878, and 1879 there were these outstanding eight-per-cent bonds the Company had to get up, that they had to stamp down; that they were bankrupt if they could not get the interest stamped down; and they were staggering under that load. They had defaulted on their interest after November, 1878, on these very Chase bonds, and did not pay when the next coupons fell due. After November, 1878, at each recurring period, as these coupons fell due. he could and did come over here into Vermont and bring suit in the United States Court against the Company, and could take any property of the company on execution under his judgment to have enforced the payment of these coupons. The Company had to get rid of him. They had used all the power they could to get everybody in. And they had to get them in. It would raise trouble probably with these people that had stamped their bonds down—innnmerable suits and obligations. A suit had been entered against Chase and Governor Page, and another suit against them and all the Directors, for some misrepresentation, some puffing the stock and securities of this plaintiff Company—for trying to enhance the value of its securities in the market. My associate reminds me (and I think that is so) it is in evidence that they had agreed not to take judgment or issue execution against him.

Mr. WALKER—Not to issue execution or sue judgment in this case.

Mr. BURNETT—That leaves it clear. I had forgotten that. I do not mean to go beyond the testimony. And I think you will do me the justice to say when I get through I have not transgressed in that respect. Mr. Chase puzzled me here by his manner upon the stand. He showed himself to be a man of intelligence, but hot and hasty in temper. A

man of character, doubtless, but impulsive and cranky. Such men are hasty in their speech, hasty in judgment and in conclusion. And you as judges of character must weigh their words according to their character, according to the exhibition they make of themselves upon the witness-stand. That is what jury trials are for, trials in open court, so that jurors may see the witness, and judge by the eye, judge by the involuntary act as well as by speech, as to what is truth. Now, then, he said that he was ready to sell those bonds at par. I venture to say that you, gentlemen, did not believe that; that he has simply forgotten. Do you think these people who were trying to get these bonds stamped down, these very bonds that were selling at par the moment they were stamped down, would allow these suits on these coupons to be commenced and continued along if they could have procured these bonds at any such rate? In addition to that, Judge Prout says Mr. Chase informed him that he called these bonds worth 120. The next year they paid one of that very pool that Chase represented 25 per cent above par. What did they do? Governor Page allowed these Collamore suits to be pressed just so far as not to allow any injury to this man, but to make him come up and do what the rest had done; not be preying upon this Company and making it pay him eight per cent when all the others who held securities of the same kind had consented to their being stamped down to six per cent. That is what Governor Page did. And he did it through Judge Prout. I will take occasion right here to refer to one single document, and that is Mr. Bryant's letter. I read from the original. It seems to me that that ought to settle this question. There is nothing more of it. Perhaps I might add this, that after this Company has got these bonds in, it is a great unfairness (I do not designate it as dishonor, but leave it upon the word "unfairness")—having got these bonds in and had them stamped down through the labor of Governor Page, he having the right to take these bonds (and he could have taken them himself and enforced the eight per cent) after it being openly stated to the Board, and standing there since 1881 on the record, and all that was done about it—that they should now come in here, and keep their bonds and keep the advantage of the two per cent, not return to Governor Page the eight-per-cent bonds, keep all the advantage and seek to throw on Governor Page all the burdens of the settlement. That, we say, they cannot do. There is unfairness in taking that position to say that they may come in here now and claim from Governor Page the $15,000 which he paid to settle these suits brought for the attempt to enhance the value of its own securities—make this claim against him. Go back and stop and see how mean that is. It was a service that, if ill-advised, was done for the benefit of the Company and its securities; and yet because it got the benefit of the transaction—which does not happen to be technically correct—they now come back and say that he shall pay this money; they do not put him in his former position or return him his bonds.

Gentlemen, these are footprints made by the way. I might stop and use a simile like my accomplished friend. When he got at paper "A" he started out by saying, "Here is something to stand by; in Western phrase, here is a milestone in starting on this journey: something to tie to."

Well, I never heard before of a fellow starting out on a journey by tying himself up to a milestone. And then, again, his metaphors got a little mixed. "This is a beacon-light," said he, "that we can rest upon—sit down on." Well, this is not a milestone that we are going to tie ourselves to, nor a lighthouse that we can sit down on; but it is a footprint, perhaps you may say.

Here is a letter from Mr. Bryant sent to Governor Page, which he read to the Board, which they acted upon, and which Judge Prout indorsed as being true, and approved as counsel of the Company. It is the first time almost in the history of the affairs of trustees that I have seen a suit brought to hold a trustee accountable for his actions in the administration of his trust where he exercised a wise discretion and acted under the advice of regular counsel. This was done under the deliberate advice of counsel, the counsel taking part in the transactions. Now, in a matter of this kind, if a trustee is in doubt about an act in the administration of his trust, where shall he go? He shall go to the counsel of the Company, the law says; and if he follow the advice of counsel and act in good faith according to the rules of law, that shall be his perfect vindication. The law has said it; courts of equity have said it. Yet that was done in this case.

Let me read Mr. Bryant's letter. It is as follows:

"To prevent, as far as I may, any mistatement or misapprehension of the grounds of settlement of the suits brought some years since against yourself and your co-directors of the Rutland Railroad Company, namely, the suit of John H. Collamore, Trustee, *v.* Johu B. Page and other Directors of the Rutland Railroad Company; Gilman Collamore *v.* same; Michael H. Simpson *v.* John B. Page and George B. Chase, Directors, etc., and till this day pending, the suit of Gilman Collamore in our Superior Court, the other two in our Supreme Court, aud all being for alleged misrepresentation in a publication entitled 'Rutland Railroad Securities,' put forth over the alleged signatures in print of yourself and Mr. Chase as a committee of the Directors, and which suits have this day been disposed of, I note here the facts as I understand them—namely, that Mr. George B. Chase, one of your co-defendants and the acknowledged author of the pamphlet which has occasioned these suits, having brought suit against the Rutland Railroad Company upon the coupons of a large amount of eight-per-cent first-mortgage bonds of that Company, to compel the payment of the full rate of interest thereon after most of the holders of such bonds had consented to reduce the rate to six per cent per annum thereon, agreed that if the above-named suits pending in this county upon the pamphlet aforesaid could be disposed of he would at any time between this date and May 1, 1881, sell his bonds at par and accrued interest, aud would make the rate of interest seven per cent instead of eight (as called for by the coupons), from the time when other holders reduced the rates on their bonds of the same class—that is to say, from November 1, 1883; that you thereupon purchased the stock and rights of these several plaintiffs, and caused 'judgment for the defendants' to be entered in each of the above suits; and took and now hold Mr. Chase's bond to sell and deliver his Rutland

Railroad bonds, with the unpaid coupons thereon (now in suit in Vermont), upon the terms above stated. This is my own understanding of the grounds and conditions of this settlement ; but as my own attention has been mainly devoted to preparation for the defence of these suits at the trial, which but for this adjustment was to have come on next week, and as the negotiations with Mr. Chase's counsel which have led to this adjustment have been conducted by Judge Prout, I do not wish this letter to go on your files or to be considered as from me to you at all, unless and until it receives his written indorsement as correct."

Judge Prout on April 11, 1881, when there was no question, no conflict, nothing but the pure performance of duty, wrote upon it as follows :

"The foregoing, as I understand it, is substantially correct. The negotiations were with Mr. Chase's counsel, and terminated as above, to the great advantage of the Company, as I think.

(Signed) "JOHN PROUT."

If judgments can be recovered against trustees under such circumstances as that, then God pity trustees in the State of Vermont!

Well, we come now to the interest item. That is the 24th item of the specifications. "Amount of interest on funds of the Rutland Railroad Company wrongfully diverted to his own use while its President, at nine per cent, with yearly rests." They were going to have interest, and interest at nine per cent. They were going to paint the walls red all over the country, and going to have $175,000 upon that item. Well, your Honor will remember, I think, that I said, on this question of general balance set forth in this pamphlet and covered by that item, half an hour I thought was enough to puncture that as a soap-bubble and have it disappear beyond the vision of man. It did not take half an hour with Mr. McLaughlin, their witness, on the stand to utterly dissipate any possibility of a recovery under that claim.

That item was mainly based on these balances set out in this pamphlet, which were put in evidence on pages 24, 25, and 26, in which they start out by showing an average balance of cash on hand ranging all along those years up into the hundreds of thousands from, say, $5000 up to $360,000 the first of each month. Well, now, what was that based upon ? To speak fairly, Mr. McLaughlin, who made this pamphlet, claims that this report was made up simply from the face of the books. But it was a pamphlet calculated to do a great deal of injury, and it did. Following on the heels of the circular of this managing Director with the smile this came out, and shows that there were one, two, or three hundred thousand dollars of the Company's funds that somebody had in his pockets, that the Company were paying interest on year after year ; and that Governor Page was that person. Now that was a serious charge to make against a director and president of a railroad company, that he had been concealing this surplus and using it for his own purposes. And Mr. McLaughlin goes on in his comments as follows :

"For the three years, June, 1874, to May, 1877, inclusive, the average cash on hand, as shown by the books, was $236,354.42, and the average amount of notes payable outstanding during the same time was

$610,616.98, and the Company was issuing and paying interest on $236,000 for those three years, and $119,000 for the whole fourteen years, its notes in excess of any apparent need."

That unexplained was a very damaging thing. Nobody can compute what the effect of that was upon the stockholders and financiers; they might well say, While we have been raising money and helping this road along, and you Directors complaining that you needed funds, your very books show, according to this report put out by the .Committee of the Railroad Company, under its authority and sanction,—and ought to be true if it is not true, and we have the right to take it as true,—that you had on hand $236,000, as an average, and for the entire period $119,000. That was the thing that went to the world. That was enough to crush Governor Page. Yet, gentlemen, there was not one word of it true, not one word. The truth was the reverse. There was sometimes perhaps money in the treasury of this Railroad Company to meet its needs; but after that was put forth to the world (people would not have caught that little phrase, "as shown by the books," and imagine that the books were false), the world would have said, It does mean so much cash, because the books say so. There was no qualification that the books did not speak the truth. And they put Mr. McLaughlin on the stand and had him swear that this report was true and that there were those balances; and they thought they had made a *prima facie* case that they were going to recover upon. Then we took Mr. McLaughlin, the expert. And, by the bye, do not misunderstand me; I do not cast one word of reflection upon this witness. There are very few witnesses they have put on the stand that we do make any reflections upon. I believe Mr. McLaughlin means to be a square and honest man, and the only thing that he has done wrong is that he has sometimes permitted (I don't know under what influence) his name to be connected with statements there that are untrue. And I believe that if he had his examination and report to make over again he would not repeat much that is in this book. He has used phrases here that he did not mean to use. I do not know under whose pressure, nor under whose malice and venom, certain statements are put in there over his name. Mr. McLaughlin appears fairly well on the stand; and I have no doubt he is a good, fair accountant; but he was induced to allow his name to go on that manuscript vouching for things totally wrong and untrue, and that had a great tendency to injure, if not to ruin, a prominent citizen. Now, what does he say on the witness-stand about these balances? I read from page 389 of the record of the testimony:

"*Q.* Do you pretend to say to this jury, now, that as a matter of fact these balances as there shown for those years (because the heading there is erroneous) are correct?

"*A.* It should be a yearly average.

"*Q.* That for those years there was in fact any such average balance in the hands of the Company, saying nothing about the books? Did you ascertain as a matter of fact that there was any such thing?

"*A.* I have not ascertained as a matter of fact that there was any such amount of cash on hand.

"*Q.* Or that there ought to have been?

"*A.* I never believed that the books were correct in that respect.

"*Q.* Do you believe, and now say to the jury, as a matter of fact, that that is a correct statement for any one of those years covered from 1868 to 1883 of the amount of average cash in the treasury, or that ought to have been there?

"*A.* My confidence is not entirely firm that it was so.

"*Q.* Now, I ask you to be a little more frank than that, and state whether or not you do not know, since your examination, that there is not one of these results of figures correct as a matter of fact?

"*A.* Qualifying it by saying that I only put it forth as what the books say, I say I do not believe that one of them is."

How long did it take for that to drop out of the case? That was not more than five minutes.

But there is more. As the boy said when reading a story-book, "This is mighty good reading all along here." Now, what was it? We wanted to get at the fact because we knew what it was that made that apparent balance according to the books. And we tried to call out and show to the jury the *raison d'être*, the reason of its being, as the French tersely express it. Well, it was this: that the Company had bought of the Central Vermont stock $288,000 for themselves in 1874 and 1875, and perhaps a little later than that; at any rate before this period of 1878. And it had been carried on to the books as cash on hand. And so during the whole period; first the stock, and afterwards the Vermont Central bought it back and gave their notes to the Company in lieu of the stock, then the notes were carried as cash; and during all that period both the stock and notes were carried on the books as cash. What we blame them for is that this appears right on the face of the books and papers, and yet they send out to the world a statement that led the world to believe that there were $300,000 of money that Governor Page was using in his private business and ought to pay interest on; and they put in a claim here for $175,000 for interest on it. That was a fine claim, wasn't it? And the facts existed upon their own records. The least examination would have shown them, and did show them, that there was no shadow of foundation for such claim. That is unfair, gentlemen; and we do not ask you to take mere statements of counsel for these things, but take their own witnesses, and out of their mouths we will condemn them; not by hostile witnesses, but friendly and under their own pay. What does the witness McLaughlin say?—

"*Q.* Supposing this thing occurred; supposing that the Directors of the Railroad Company, authorized by a resolution of its Board, purchased a certain large amount of stock of the Central Vermont Railroad Company, and entered that stock on their books as cash received into its treasury, and carried that stock for a series of years as a cash item, how would that affect the cash balances?

"*A.* That would necessitate the counting of the Central Vermont stock as cash on hand.

"*Q.* Don't you know that the books show, and didn't you find it from

the books as a fact (books and papers), that that is true—that it was thus carried on to the books?

"*A.* I think it was.

"*Q.* Did you make any correction of these statements and balances to take out that Central Vermont stock from the cash?

"*A.* No, I did not; because I did not know of it at the time I wrote.

"*Q.* You know it now?

"*A.* I have heard of it. I think I know it.

"*Q.* That would affect the balances during that whole period which it covered?

"*A.* It would increase the cash balances on hand into the amount, apparently.

"*Q.* It would not increase any actual cash on hand?

"*A.* No; increase the balance. It would increase the balance called for if they invested the Central Vermont stock and treated them as cash.

. . . . . .

"*Q.* Didn't you run across and state in your report a large amount of dividends received by the Rutland Railroad Company from Central Vermont stock?

"*A.* Yes, sir, I did. They appear to the credit of interest account.

"*Q.* Didn't that lead you to inquire whether they had such stock?

"*A.* I may have inquired; probably did.

"*Q.* Can you remember now whether you made such inquiry, or whether that fact came to your knowledge?

"*A.* I have no doubt that I inquired, and that I knew that they had at some time Central Vermont stock, and that it must have been carried as cash on hand because it was not entered on the ledger."

Now, that is the only blame we have got treasured up against Mr. McLaughlin, that he would consent to state in his report that which he knew would mislead the world and the public and let that go out to the world, and then come on the stand, under their shelter, as their witness, and acknowledge that he must have known it at the time. But further:

"*Q.* Don't you think that ought to have been stated?

"*A.* Yes, I think it ought. But it escaped my mind. There was no intention of being unfair. I think it ought to have been stated. I should do it again if I thought of it. If I forgot it, I should not."

Well, that was a serious thing to forget.

"Q. Now, if that purchase was made early in 1874, ... say in May or June, wouldn't it largely change these balances if that stock was carried as cash from March 1874 down to June and July 1878?

"*A.* It would reduce the cash a little below par occasionally.

"*Q.* Reduce the cash so that the balance would be the other way?

"*A.* Yes, sir; in some cases.

"*Q.* That is, so that somebody would have to be furnishing money for the Company, and they, the Company, would be in debt instead of credit to cash?

"*A.* It would reduce all the balances larger than that amount."

So that while somebody who was a good friend to this Company was putting up his great private credit to carry it, they, the Company, have

heralded to the world that during that time he was using $260,000 of its money annually.

I will refer to another part of the testimony, showing another little item; as the feather is wafted, showing which way the wind blows. And we see what I mentioned this morning.

Of this stock that was given Governor Page as indemnity, when he consented to turn the property over to the Rutland Railroad Company, he received certain dividends. And can you imagine now that this corporation would come back and publish in a report as a reflection upon him that he had taken the dividends that he had received on that stock and put them back in its treasury? I do not know that it was his duty to do that, but if he did it, he did his full duty to the Company. Imagine the cruelty of so coloring it and heralding it to the world as being something almost akin to embezzlement! And this is the way that they state it in the pamphlet which I think my brother Ballard characterizes as being of such high character and ability as to rather compel your admiration: "Amount received of J. B. Page, wrongly paid him on 2800 shares preferred stock in his name as Trustee, but property of the Company." What would a stockholder say on seeing that? For heaven's sake, who should it have been paid to? It stood in his name. It was given him by the corporation. How was it wrongful? This statement puts it as though he had kind of got his hand into the treasury and hauled out in some wrongful manner $9800, and then having wrongfully got that much money had been induced to pay it back. Don't sit down on that, brother Ballard, as upon a beacon-light, because I think that before you get through with it it will be kind of hot.

What does the gentleman Mr. McLaughlin say in his testimony upon this matter?

"*Q.* Turn to your report at page 12. I find there written, 'Amount received of J. B. Page, wrongly paid him on 2800 shares preferred stock in his name as Trustee, but property of the Company, $9800."

"*A.* I see that.

"*Q.* From what did you make that charge?

"*A.* It is not a charge; it is a credit.

"*Q.* Is that not a charge that he wrongly received that money?

"*A.* No, sir; not at all.

"*Q.* Wrongly paid him?

"*A.* No, sir; I am copying the entry in the book, if I remember right."

He did not get that from the book. I think that word "wrongly" never was evolved from Mr. McLaughlin's consciousness. Some smiling gentleman with Mephistophelean instincts whispered it in his ear that there must be a great wrong there, and he, McLaughlin, took it and wrote it down believing it to be true. But to proceed with the testimony:

"*Q.* Will you turn to the journal and see if there is any such entry there?

"*A.* I might have used the words by error, possibly. I remember nothing about it. I never connected the word 'wrong' with the transaction before."

Think of that! And having written it and these new Directors having sent it out to the world, this witness comes in here and says that he never connected the word "wrong" with it. That is the kind of thing that they have stirred up the community with. And so he goes on explaining that he never coupled the idea of wrong with it. He says, "I have simply copied the phraseology of some one else" (page 444). That is what I thought. But to return to the balances.

We had Mr. McNair go through and make a statement of these balances as they actually appear, taking out the Central Vermont stock during the period that it rested there and while it was carried as cash, and showing what the results were. And that paper we have submitted to opposing counsel. They have examined it. There has never been a whisper about it since. Silent as oysters. Well, they are silent as oysters in that respect, but they are not entirely like oysters. As brother Travers in New York once said to one of his friends who was talking too much —and I don't know but you will say that to me before I get through— "Why are you *not* like an oyster?" His friend gave it up, of course. "Well," said Travers, "the reason is because you don't know when to shut up, and an oyster does." I don't think these gentlemen knew when to shut up in this case. But they are silent as an oyster about this balance. Not one word after that evidence.

And what did McNair show? He showed that, during all those years that there appeared that large balance as being used by somebody, the balance was the other way about $8000 of amonthly average; that is, during the years when it was carried as stock. He did not have the data to give the exact figures when the notes were carried, but about the same result. So, instead of there being a balance in somebody's pocket, somebody was furnishing the money or furnishing his credit during all that time to help carry that indebtedness of the Company. Then I ask the witness, "Do you run across in the books any entry that shows who, if any one, was putting up his personal credit to help this Company along?" etc., etc. Every truth in the world is in harmony with every other truth. And here it comes in again.

"*Q.* Mr. McNair, have you struck an average, what the average would be during that period, whether money in the treasury or out of the treasury?

"*A.* Out of the treasury.

"*Q.* Monthly average of how much?

"*A.* $8800.

"*Q.* Instead of anything being in there?

"*A.* Yes, sir.

"*Q.* Perhaps you had better explain the way that could be, or how it would be that there were those amounts from time to time out by the books?

"*A.* Some good friend of the Company was possibly carrying some of it for them.

"*Q.* On his own shoulders?

"*A.* Yes, sir.

"*Q.* On paper of the Company?

"*A.* Probably be entered up on the journal, if it was paper of the Company.

"*Q.* Are there any entries or memoranda on the journal that show or indicate that any part of this load was being carried by a party outside —being carried for this Company?

"*A.* Yes, sir."

And now there is nothing left of these first specifications but that $7000 item, and No. 23, which enters into the general balance, use of acceptances; and that I do not propose to consider in this connection. The $7000 item I do not propose to spend a breath upon. I do not know what it is. And I do not think you will ever know. There isn't anything in it. We never have known what it means. They prove in this case a $7000 loan of the credit of the Brandon Manufacturing Company to this road, and a loan of the credit of this road to the Brandon Manufacturing Company overnight. There may have been some check of that amount that enters into the journal-balance. If so, it will take care of itself.

Now, gentlemen, I have gone thus far considering somewhat the main features of this case and Governor Page's relation to them, and showing the work that he has done to help this Company along. Let me say one word further. He has been engaged, as I said this morning, in large transactions, many of them. He is a man of broad vision, and he could not have done what he has done with this road without being a man of great physical and mental energy. He has been engaged in many large enterprises beside, and when the disaster commenced here, three or four years ago, he was heavily loaded down in these enterprises. Some of them have resulted disastrously. The prostration in business and the shrinkage in values have wrecked many hopeful enterprises and many able men. We have seen them go down in New York by the score, many of them counted among our ablest financiers. Why and how, who can tell exactly? How many enterprises have failed and faded out and disaster overtaken them? You know how that is. The financial prosperity of a country ebbs and flows like the tides of the sea. When it is coming on and mounting up, everything is prosperous; everything you touch you can turn into money, and everything improves on your hands. But when the tide sets out, then you may be as wise as Solomon, you may turn in all possible ways, fruitful things seem to wither in your grasp, the very laws of nature seem to be against you, and like the undertow of the sea it carries you out beyond your depth. You cannot stem it or stop it. It takes the wisest and the best out into unknown seas, into wild disaster and ruin. Many of Governor Page's enterprises have met such disaster, perhaps. And I beg you to do him this justice, you who know him, you who are his neighbors; where disaster has met enterprises, if so it may be, it has not been in enterprises for his personal benefit. Has he wrecked any institution by enriching himself? That is the test. That enterprise, the Rutland Railroad, was the cherished darling of his life; to make it a success, to build it up, to see the smoke of its engines in the air as they swept past your village, was like a halo of glory to him. It was the

pride of his life to make it live. His enterprises were for the benefit of the public; they were for the public good, for the benefit of your beautiful village and its industries. Like Abou Ben Adhem, he loved his fellowmen. And the names of such men shall be written at the top of the page. He built up your scale works here, and involved himself in doing that. Why? Was it to enrich himself? No; but it was to make your town prosperous, to give labor to men who needed the fruits of their toil, —to give employment and industry, and homes and bread to the poor; to have the music of whirling wheels within the sound of his doors. And shall such men be driven out from your midst and hounded by selfishness? It may be hurled at him, and has been hurled at him, that some of these things are wrecks. Very good; some of them are wrecks. But look at it all fairly and justly and who will stand the best, the men who hurl the taunt or he at whom it is hurled?

We come now to the consideration of a branch of the case that is or might be painful to deal with, and that is the question of deficiency in the treasury of this Railroad Company. Who is responsible for it? It is no pleasant duty to undertake to trace out wrong and show where it rests. We shall not use any severe epithets in discussing this case, nor attempt to characterize by any burning words the conduct of men that have been witnesses on this stand. We shall try to show you as best we can where the truth is as to this deficiency. And on the solution of that question, gentlemen, depends, I apprehend, your verdict. If you become convinced that the deficiency which exists on the books of the Railway Company is in Mr. Haven's hands, that he is the man that is responsible for this, and has the money, you will not only be compelled by the logic of the testimony to say that Governor Page does not owe this Railway Company, but that the Railway Company does owe Governor Page.

Starting out on this proposition, I am sorry to differ with my eminent friend from Burlington as to this question of deficiency, what it may or might be. It is not correct to say that Mr. Haven may have this deficiency and yet Governor Page have it too. That won't do. And the simplest illustration in your lives will show you the fallacy of any such assumption. If you have in your granaries 20 bushels of wheat, and A comes and steals or carries away 10 bushels of it, and you trace it to A and go and compel A to put back his 10 bushels, or trace it and locate it and have your hand upon it, so that you have the 10 bushels in your granary and 10 that A had, then you have your 20 bushels; B does not have any, cannot have any, because you have your 20 bushels. That is all there is in this sum: 20 bushels went in and 10 went out and have been recovered back. That tells the whole story; there cannot be any other 10 for B or C to have.

It is only for you to ascertain how much this deficiency is and who has it; and if one man has that deficiency, then nobody else has got it— cannot have it. That was the theory on which this case started out in the beginning. Now I do not mean to say, and I am not going to say, that Mr. Haven is a totally depraved man. I have no doubt he has many good and kindly qualities; that he has been a good citizen; that he is a man of good habits, and that he is kindly in his family relations. It

is a very unjust estimate of mankind to say that A, because he commits a wrong or does a wrong, is wholly bad. That is not true. There is a little good in every man, almost, in the world. I never have met one that had not some good in him. And there is no man so good but that he has a little bad in him. It is only a question of degree of where the line is drawn. Do not let us swing off into epithets and vituperation. Let us treat it as calm and sensible men, and try to arrive at truth and justice in our dealing with our fellow-men. That is the better way. I do not mean to take the position that there is any total depravity here ; I mean simply to take human nature as it is : that this man probably, with an ordinary good nature, with an ordinarily upright character, not a strong moral sense or character, probably unconsciously in the beginning, without thinking much of wrong, and not dreaming, when he first commenced this overissue of stock, but that he would be able in a short time to replace it, thoughtlessly did that thing. These things go on step by step. Good men get led into them. He went on step by step, until it became necessary for him not only to sell and overissue stock to make up his deficiency in cash, but he made one hand wash the other—one time issuing stock and selling it to make up his cash deficiency, putting $25,000 into the treasury by overissue of stock when he had used the money in this Bates House enterprise in 1880, and otherwise the deficiency reaching that year about $70,000, as shown by the July set-backs of that year ; at other times taking the money of the Company and paying dividends on overissued stock. Thus things went on, and he got into complications and into trouble, and he is led on step by step, complication after complication, until finally comes exposure and ruin. I think that is the history of that matter. And one of the things I like least about it, and that I think you do not like about it, is that after he had got into this trouble he should try to drag somebody else down with him—that he should try attempt to reach up like a blind Samson to grasp the pillars of the temple of the fair fame of others and drag it down in ruins about his own head. That is saddest of all: no contrition and the effort to ruin others. I do not like his cool sneers upon the stand,—a man in such peril, in such straits that he has to say, "I have to plead my privilege ; I cannot answer your questions here because I might criminate myself." A man in such straits, I do not like to see cracking jokes on the witness-stand, making light remarks and winking at his counsel. It is not exactly a time for witticisms and jokes. That part of the nature of the man I don't like ; and you, I think, did not like it. When asked to bring in a certain paper in the morning, when we were pursuing a very serious matter, I did not like to see the man making such remarks as he did. There is a time to be serious and a time to be joyful. And while I am rather on the side of having fun in this life and making our lines as bright and glad as possible, yet there are times when it is mighty unbecoming to be cracking jokes. And that is when a man has the penitentiary yawning before him. He said, as you will remember, "Perhaps I will bring the paper." Then the question was put to him, "What do you mean by 'perhaps' ? " I mean perhaps I will bring it," was the reply. " Well, *will you bring it?* said Mr. Walker, getting a little indig-

nant. "What do you mean by saying *that perhaps you will bring it?*" "Well, *I mean that I might break my neck going over to my house.*" that was very bright and witty, possibly, but it was not a very becoming thing to say. It was light and frivolous, to say the least of it, and shows that he did not appreciate the gravity of the questions that are being considered by you, gentlemen. They are grave and important matters —very grave and important to him.

That this man will misstate things, I think, is first here to be established to you. And that he will do it knowingly, in the peril he is now in, and that he has done it before you in this case, is important for you, gentlemen, to know, and to have fairly in your minds, if it be true. And upon that matter I do not propose to rest upon my own recollections of testimony, but to be very careful about it. Because, that being once established, it has a great force and effect in this case. It used to be an old maxim of law, *Falsus in uno, falsus in omnibus*—commonly rendered, "False in one thing, false in all." It is pretty nearly true; certainly is true on all ordinary subjects. A man that will testify falsely about one material matter in this case will, if necessary, testify falsely about any other material matters in this case. And I venture to say that there is hardly a single material question at issue here that you, gentlemen, can find in favor of the plaintiff, except upon the testimony of Mr. Haven. And you must have remarked, for I wrote it down on my sheets, that upon every single subject, every single specification, almost, that my friends on the other side it alluded to, was either opened with Mr. Haven's testimony or closed with his testimony. And very much of it stands on his unsupported testimony. He was the rock upon which they built their case. He was not only a rock (and I hope I won't get mixed in my metaphors) upon which they built, but they built upon the information which he gave them, and that led them to very frequent disaster and ruin in this case, as you have witnessed. Now, you will remember one rather striking feature that occurred as this case went along; it was this friendly feeling that has existed between Governor Page and Mr. Haven up to a certain time. And when that ended, what was the *occasion* of its ending? Pretty early in the trial that came out, in the examination of either Mr. Haven or Governor Page, and perhaps Mr. McLaughlin. They all came along pretty close together upon that question, and it became an issue what the truth was about that matter. You will remember that Governor Page said that he had permitted Mr. Haven to have access to the office after the overissue of stock had occurred, and even after his resignation. He was generous and kindly, and did not want to come down on the man. It is only men of affected virtue that come down on men in such a manner. A true man, an honest man, strong in his own rectitude, as a rule is magnanimous, and recognizes the fact that all men are liable to err and go astray, and that men may commit a grave wrong and yet not be wholly bad. And he allowed him to come there. He would, undoubtedly, had it come to that, have put his hand into his own pocket and helped him raise money to pay that deficiency; would have said, perhaps, "This is your first offence; I will help to save you—help you to save yourself." Governor

Page is kindly and truthful to weakness, almost. You never heard him say an unkind word about a man. He errs on the other side, rather than for his own protection. Well, he allowed Haven to have access there to the office, and he was kindly to him; but he discovered something that is mighty significant in this case. One day, looking at the stock-book, he says he discovered an erasure or alteration of the books in Haven's handwriting, and he charged Mr. Haven with it when he came into the office. It changed the balances on the books. He recognized it as Haven's in looking at it. At any rate, he recognized that it was Haven's work, and he charged him with it, and asked him what he had to say about it. I will call your attention to the testimony, and we will see what is the history of Mr. Haven's explanation of what then occurred, and his being excluded from the office. What does he say?—

"*Q.* What was the occasion when it has appeared that you were excluded from any further access to the books?

"*A.* I had been pressing him for a settlement of this account which I presented several times.

"*Q.* You mean the account as made out in G 2?"

That was a statement that he had made up showing some indebtedness of the Governor. That has been put in evidence.

"*A.* I think that is the name of it; I think so.

"*Q.* Look at the paper and see if that is the one you were figuring out.

"*A.* That was the account I was trying to get settled, and pressed the matter considerably; finally he told me one day I could not have access to the books any further.

"*Q.* What reply did you make to him?

"*A.* I said, 'Then I suppose I may understand, Governor, that you propose to beat me if you can!'

"*Q.* Has he spoken to you since then?

"*A.* I am afraid not."

Now, what did he (Haven) try to give you to understand? Do not take the mere words, but what did he intend fairly to give you to understand as the truth about that matter? That he had the paper G 2, and was pressing Governor Page for a settlement and could not get him up to it; that they had some difficulty about it, and then that he told the Governor, "you intend to beat me," and that was the end of the matter. Isn't that it? Is there the slightest error in that statement of it?

Now, what was the fact? Because here I have incontestable proof. And I would not have brought this question up, did it rest simply between two men that our opponents seek to pit against each other. We must first establish how the truth is, and who the man is that is truthful and who deliberately speaks untruth in this case, and then you can give the proper weight to this testimony of these men. Here is Governor Page's relation of the matter. I refer now to Vol. XXII. p. 116.

"*Q.* Did there a time come when you excluded Mr. Haven from those opportunities that he had in the office of the Railroad Company?

"*A.* I did.

"*Q.* You heard his relation of what took place on that occasion; that

it arose from his effort to get a settlement of that account, and that he said, 'Then I see you are going to beat me'—I think that was his language, or something of that sort—'trying to beat me.' What do you say to that?

"*A.* No such conversation occurred at any time.

"*Q.* What was the conversation that did occur? (Then Mr. Barrett interposed. The Court decided that he might answer.)

"*Q.* What was it?

"*A.* In the course of the examination of the accounts in the office we had found several alterations upon the books. (Then he is interrupted again, and afterwards proceeds as follows:)

"*A.* I called his attention to these alterations; asked him for an explanation in regard to it, pointing them out to him on the book. I sat down in a chair, and he examined the matter some little time. And I asked him what he had to say about it—if there was any explanation. He said that he could not explain it, didn't understand it. Well, I told him that it seemed to me apparent what it all meant; and if that was the manner in which he was using the privileges that we had granted him in the office, he could not any longer have any further access to the books and papers in the office.

"*Q.* Did he make any reply to that remark, or say anything further?

"*A.* He did make further reply to it. And when I made that remark to him he asked me the question, in reference to the statement that I had made to him, if I meant to say that he lied. I told him that he could understand it, as there was the fact; that he could put such a construction upon what I said as he pleased. I meant just what I said, and he thereupon took his hat and left the office, saying that I should hear from him in reference to this matter further. I haven't spoken to him from that day to this."

"*Q.* Was Mr. McLaughlin present at that time?

"*A.* I think he was; think he had called my attention to these alterations; pointed them out to me. He had discovered them."

Now, here is the source to get at and see which man is right. Mr. McLaughlin was present; he is their witness. Let us appeal to him and see which man has spoken the truth and which the untruth. Here is his testimony:

"*Q.* You said in your testimony in chief that the relations between Governor Page and Mr. Haven for a time continued friendly. Do you recollect what time they ceased so to be?

"*A.* As near as I can remember, about the latter part of June; I could not fix the exact date.

"*Q.* Do you recollect what the final disagreement grew out of?

"*A.* I think it grew out of the fact that Mr. Haven had made an erasure of a pencil-mark on the books.

"*Q.* During your examination of the books?

"*A.* Yes, sir.

"*Q.* Had he added a figure 5 which changed the result in the books?

"*A.* He made an erasure of something he had previously made.

"*Q.* Do you recollect Governor Page charging him with that?

"*A.* Yes, sir.

"*Q.* Do you recollect what Governor Page said to him after he admitted that was his figure?"

(And then comes a discussion and the decision of the Court.)

"*Q.* Do you remember who called Governor Page's attention to those changes in the books?

"*A.* I called his attention to it."

That is Mr. McLaughlin's account of the matter. But our opponents might say that is not conclusive; one man might be right and two wrong. That is true; but when you come back to the original man and get him on the record again as to the same matter, you have got the truth beyond a question. Now, after Mr. McLaughlin had sworn as to this entry changed on the books, recollect the order in which it comes. After Mr. McLaughlin had sworn that he called Governor Page's attention to this change, and it had appeared that a quarrel had arisen about that and not about any statement or pressing for settlement, then what took place? When he, Haven, comes on the stand on cross-examination, Colonel Walker asks him this:

"*Q.* Will you state what took place previously to that—what matters had been under discussion?

"*A.* I think we had been talking about trying to get a settlement—a statement.

"*Q.* Statement of what?

"*A.* Statement that has been presented here of Mr. Page's account with the Railroad Company.

"*Q.* Had you not been talking about alterations on the stock-books of the Company to which your attention was then called, and which you admitted having made since your resignation as Treasurer?"

What do you think was his answer to that? Can you remember, gentlemen? If he had been telling the truth the first time, what would have been the answer? Would it not have been, No? But instead of this—"*Objected to by counsel on the ground of privilege that the witness might criminate himself.*" Think of that! If his first statement was true, why not repeat it? Wasn't there an admission on his part, stronger than any words could be, that it was false, and that the quarrel was about these alterations? And then what does the witness say? The Court counselled him that he had a right to claim his privilege. The Court said to the witness, "You understand your privilege, and you are not obliged to answer any question which tends to criminate yourself. Supposing he admitted that the quarrel had been about the alteration of the books, that tended to prove, and was a link in the chain of proof (and the Court rightfully enough excluded it), that he had been overissuing stock. We offered to strike out the word "stock." Mr. Baker said, "That does not make any difference." The Court said, "What do you say, Mr. Haven, to that?"

"*A.* I will waive the question.

"The Court. You do not want to answer the question?

"*A.* No, sir."

Who told the truth about that?

Now, gentlemen, I think it is important to establish another thing. We have established the fact that Mr. Haven will make a pretty deliberate misstatement as to a fact that is material in the case. Do I state it too strongly? If one of your neighbors asked you about that transaction, wouldn't you say that was a deliberate misstatement; that a man who has put himself in that position, put forward a false reason for his exclusion from an office, when a disinterested witness, Mr. McLaughlin, states entirely differently, and the witness is brought back upon the stand and refuses to answer, will not repeat the statement he first made —wouldn't you say that man was convicted of a falsehood? And will you believe him when he comes face to face in contradiction with another witness on the issues here?

But there is a step farther, because we propose to make these things conclusive in your minds, and to put this man's evidence out of the case. We have said that he overissued the preferred stock of this Company. We do not ask you to take our word for it. We do not ask you to take the reports of the various committees about it, nor Mr. McLaughlin, who was on the stand, about it, but coming back to Mr. Haven himself, take him; take not only his word, but his oath. The fact of the overissue is not disputed, nor that the stock-books were altered to conceal the overissue. Now, who overissued this stock and altered these books? What does Mr. Haven swear deliberately about it before his counsel, W. C. Dunton, as a notary or commissioner, so that it was not done unadvisedly nor hastily—not done in the dark, ill-advised, thoughtless? What does he say, gentlemen? "I, J. M. Haven, on oath say that as Treasurer of the Railroad Company I have had the custody of the stock-books of said company, and have been responsible for all entries made therein; and that if any mistakes or irregularities are to be found therein, Governor Page is not responsible therefor, nor has he in any way been knowing to the existence thereof."

Now, assuming that the stock has been overissued and the books corrupted, and this man has done it and sworn to it that he alone is responsible for it, is it going too far to say that a man who will deliberately state an untruth as he seems to have done in this case, as I have just shown you, and that has deliberately taken the stock of the Company—is it very violent to say that he will take its money? These two things are beyond a question out of his own mouth. But I will make that a little clearer and stronger. Without going over Mr. McLaughlin's testimony—I do not undertake to go back now step by step, but it is one of the things that there is no controversy about—he was asked whether the entries he (McLaughlin) had made in the books were correct. They first tried to get him to state that he made the entries under the direction of Mr. Williams and Governor Page, and that he was a mere instrument. And I questioned him, item by item, "Is that a correct entry as you understand it, after two years of investigation?" He said "Yes" to each one. Then coming back to this stock-overissue question, I wanted to show whether we were deceived and whether Mr. Haven had been overissuing the stock or not. I said:

"How long were you engaged upon the stock-book?

"*A.* Upon the preferred stock? Before I had found a correct balance I had spent about a fortnight."

"*Q.* You at that time did reach what you called a correct balance in a fortnight?

"*A.* *What I believe now to be a correct balance.*"

The deficiency leaving an overissue, as he reported it, of 2391 shares. That was the amount that he then figured up, and what he believed now, after two years of investigation, to be a correct balance. Overissued by J. M. Haven. Mr. Haven says he did it, if there are any inaccuracies. Mr. McLaughlin says he figured it up then and found it an overissue of 2391 shares. And now after two years' investigation he believes that to be a correct statement of the overissue of stock. I think there can be no mistake about that—the plaintiff's own testimony and no contradiction.

Now, passing from that, I want to lay the foundation for one or two other things. We have got two or three starting-points in this case. It becomes important to know whether these books were correctly kept or are wrong that show this deficiency that Mr. McLaughlin has figured out—whether anybody has corrupted them. What does Mr. Haven say about that? On page 845 of the record I read from his testimony:

"*Q.* You say that Mr. Page would state to you as to the larger transactions, the more important transactions, what had been done, and what record should be made of it?

"*A.* Yes, sir.

"*Q.* You refer in that answer, do you not, to transactions that had been conducted by him?

"*A.* There are some transactions with regard to exchange of bonds, scrip, etc. I had general directions from him in regard to those entries.

"*Q.* What were those general directions?

"*A.* To get them onto the books.

"*Q.* Did he ever tell you to get them onto the books, as you understood it, wrong?

"*A.* Not that I remember of."

Recollect, this is a matter that he had in charge and claimed that Governor Page gave him instructions about.

Now, gentlemen if there had been any such instances, if after these months and years that he has been digging at these books, following up his own deficiencies, and he had found one erroneous entry that he could have traced home and could have asserted was Governor Page's, would he not have said it? But he did say, "Not that I remember of." Not a single instance.

Then what does he say further? What does he say about the books? I read from page 779 of the record:

"*Q.* Now, Mr. Haven, a general question in regard to the correctness of the Railroad books, so far as they were kept by you, all of them—what have you to say on the subject of their correctness?

"*A.* I say the accounts of the Railroad Company are correct. I do not say that clerical errors may not have crept into the books when the entries were first made in some cases, but that those were ascertained when

trial-balances were taken, and if any errors were found they were corrected or a trial-balance could not be obtained; and that they are, or were as I left them, correct."

Could anything be clearer and straighter than that? He first says Governor Page never gave him any instructions to make a wrong entry; next that, as he left them, they (the books) were correct. Correct in what? Correct in what he was responsible for. And these books show on their face that J. M. Haven is deficient in his cash as Treasurer $40,000 aud odd. That is one milestone. But let us go a little farther than that. That, gentlemen, was called out from Mr. Haven. I want to refer to one other place before I leave that. And I read from page 965:

"*Q.* I am not inquiring about the system of book-keeping, but whether whenever you made a particular entry, so far as you knew, it was a correct entry of the transaction as you understood it?

"*A.* Yes, sir."

Now, that has an important bearing upon two features of tbis case; first, that he could not shoulder any defect in these books, or false entries, onto anybody else. If he could, he probably would have done it. And second, if he had asserted it, it is untruc. It is as untrue as anything can be untrue. And that, gentlemen of the jury, you won't question, for, commencing in the year 1878, in June of each year down to 1881 be has made a series of false entries, to change his cash balances just at the close of the fiscal year. Those were not any of the things that Governor Page was responsible for eutering. He did not undertake to claim, when he came on thc stand, that Governor Page gavc him directions about them. They are false entries, as of payments made in June about matters that did not require to be paid and were not paid until July and sometimes later.* A queer thing is tbat these set-back entries from 1876 to 1880, inclusive, averaged about $45,000.

The first one, in 1876, was $41,000. And that was two years before he says Governor Page ever had the handling of the Rutland Railroad Company's money, which he says began in 1878. In 1877 it was $40,314. Now, assuming that there was a deficiency at that time of about $41,000, here comes in another remarkable feature. In 1878 it reached $36,000. And he had an acceptance that had been approved May 14 and was paid September 21, 1878. He falsely charged it off as paid in June $5000, which makes just $41,000 for 1878. And coming down to 1879, why did his set-back suddenly drop down to $22,000 in June? We have traced these out, and they are a little curious. There was $41,000, or just about that, for these three years—$41,000 in 1876, $40,000 and odd in 1877, $41,000 in 1878; and in 1879, $22,000. How could that be and cover up a $41,000 deficiency? Now, gentlemen, this $19,000 item that somebody said here was an entry to cover up cash, was made in June, 1879, and was $19,472. And adding that, as an unexplained outgo of cash, makes $41,000 covered up and accounted for. That is the entry that they first charged to Page. Mr. McLaughlin swore that Mr. Pagc's foot-tracks were not about there. And their counsel came in and said that they wanted to withdraw that item, and well they might. That makes up his

sum. The next year, 1880, it mounts up to $70,000. Any denial of that? Not a whisper; not one breath. In 1881, again, it drops down to the old $40,000 or $41,000.

These are false entries. He had sworn absolutely and as positively as he could swear that all the entries on the books were correct. I don't care what excuses he makes for it. The excuses are as false as the entries are false. You remember that he said he sometimes charged up $21,500 of rent in the month before he had received it. That is true. But that did not begin until 1880. These things began back in 1876.

The man who practises to deceive gets himself into many troubles. Perhaps I had better indulge in a quotation, brother Ballard.

> "O, what a tangled web we weave
> When first we practise to deceive!"

Now, I think I have shown two things—that this man has not stated truly to you things that he has undertaken to state; and that he has deliberately corrupted his books, and that when he stated that they were correct he stated what he knew was not true. I do not think I state that too strongly.

If that is so, then one thing more will come in with great harmony with that and this deficiency question. And that is that he had the opportunity to use the Company's money without its being discovered all this time. You want to look at the circumstances and surroundings, and not in your minds convict a man of a thing until you have considered it in all its bearings.

Well, now, on that quarter I will refer to Vol. XIV., p. 824. I am a little tedious about this, because this seems to me a sort of vital point in this case; because, as I said before, my associates and myself believe that if you make up your minds that Mr. Haven is not worthy of belief, and that he has corrupted his books, and that he had an opportunity to get this deficiency, and that the proof tends strongly to show that he has got the whole of the deficiency, the plaintiff Company has got no case against Governor Page.

I come now to Haven's use of the Company's money for his private purposes. I read another extract from Mr. Haven's testimony, as follows:

"*Q.* Now, while you were making all these payments, did you keep any memorandum that went on from day to day or month to month to know how much you had drawn on individual business?

"*A.* I may have had some pencil memoranda in my cash drawer.

"*Q.* Did you so that you knew at any time how much in each year you had drawn?

"*A.* I think I did part of the time.

"*Q.* Do you say you did?

"*A.* I think I did part of the time."

Using the trust money, the money of the Railroad Company, for his personal affairs, and keeping no memorandum from which he could tell how much; only thinks he did part of the time. The fair inference is that a part of the time he did not.

"*Q.* Did you draw checks for those individual purposes upon all the bank accounts of the Company, the Bank of Rutland, the Bank of Redemption, and the Park Bank?

"*A.* I don't remember about the Park; I have the other two.

"*Q.* At any time when this business was going on, say within the last nine years of your treasurership, did you keep a personal account between yourself and the Company bank account?

"*A.* I have got no account.

"*Q.* Were you able to tell at any time just what amount you had drawn out as related to the amount you had put in?

"*A.* I intended to keep the balance in my favor all the time.

"*Q.* That intention was a mental calculation, or was it a writing down or a keeping record of it?

"*A.* I think I remember it pretty near.

"*Q.* Then you did not keep any record of it consecutively?

"*A.* Not always."

Think of it! There was the opportunity; there was the actual use of the money. The only question is whether temptation went so far, whether he used so much that he could not pull himself together and put it back, whatever may have been his original intentions when he took it. And I do not charge that he did this deliberately; that he was originally wicked and corrupt. This is not probably true at the first, but afterwards the money was drawn out until he did get out so much that he was unable to restore it. And he was caught in this examination. Money goes out faster than a man realizes. Haven seems to have had an itching desire for property of all kinds. There seems to be an unhinged place in this man's mind; all manner of things that he was seeking to do, and of very antagonistic kinds, as we have seen. And this money would slip out very easily when all he had to do was to simply draw a check on the Company's account. That was a very easy way. The proof shows that he did it. There is no question about that. The only question is whether he put it all back. And we think we will show you and convince you that he did not.

Well, there is a little more about this. I read on page 325:

"*Q.* Then I understand you to say you cannot say that at any time you did keep such an account as that?

"*A.* That is what I answered."

No account of the money that he had drawn out and used. Then after some controversy Mr. Walker puts the question:

"*Q.* Is it not true, going back to this report of Mr. McLaughlin, that you held yourself responsible for the production at any time of the amount of balance which the books called for?"—not that he would keep the money in the bank, but that his theory of running the treasury accounts was to hold himself responsible for what his books called for.

Mr. Walker asks him that question. And he answers, "That would be the way I should be held responsible, I suppose, for the balance; the receipts are all on the journal. The payments are supposed to be on the journal, and the balance I must show where it is."

Driven to the wall. What is there left of this case? "*I must answer*

for it." Not Governor Page. "For the balance thus shown I must answer," said Haven. Those are his words. We are not proving it out of the mouth of Governor Page, but by their witness and our enemy.

Now, Colonel Walker showed you an instance yesterday. But I would like to read an extract on the point, because this is important. And I want to prove it out of Haven's own mouth that out of these bank accounts he bought scrip, and that that scrip was converted into bonds of the Company, and the bonds or their proceeds he stuck in his own pocket. That was an easy way to make money, wasn't it—if your scrip don't cost you anything, and you convert it into bonds, and the bonds become yours? Well, that is a pretty rapid process of getting rich.

I read an extract from Mr. Haven's testimony, pages 821 and 822 :

"*Q.* You said on direct examination that you were engaged in buying scrip of the Company. Through whom did you purchase scrip ?

"*A.* Several parties.

"*Q.* Pickering & Moseley ?

"*A.* Sometimes.

"*Q.* Hubbard Bros. ?

"*A.* Yes, sir.

"*Q.* W. U. Lawson ?

"*A.* Yes, sir.

"*Q.* And this scrip that you bought you converted into bonds ?

"*A.* Yes, sir.

"*Q.* As conversions could be made. And then you disposed of the bonds yourself ?

"*A.* Yes, sir.

"*Q.* Have you any idea how many checks upon the Railroad bank accounts were paid to Pickering & Moseley for scrip since 1874, in the last nine years ?

"*A.* I don't know.

"*Q.* Would you be surprised if it was over thirty ?

"*A.* Yes, sir.

"*Q.* Cases in which you paid Railroad money for scrip and converted it into bonds and took the bonds yourself ?

"*A.* I presume there are a number ; I don't know how many."

Think of it! And then there is another little transaction, and it was amazing. He claimed credit for depositing to the Company's credit, saying that he was all the time in the habit of depositing money to the Company's credit, as well as using it. Well, he did in some cases—a great many cases. A great deal that he deposited was simply money he had got out of these parties, these brokers where they had sold the Company's own stock or bonds or scrip; for instance, Pickering & Moseley, Hubbard Bros., and R. L. Day & Co.; and he had taken that money and deposited it in some other bank to the Company's credit. Well, that was an easy way of doing it. I refer now to the record, pages 763–4. There he says that there was on July 1, 1881, $22,000 deposited at the Bank of Redemption, to the credit of the Company, and that he ought to have credit for that as a deposit from his own funds. We traced that out a little, as follows :

"*Q.* What is the amount of that?

"*A.* $22,000. The Railroad Company had a note to pay the 1st and 4th of July, $20,000, and the Treasurer's account at the bank was overdrawn about $2000. They had no means of paying this note. I drew a check for $22,000 on my own bank account, and forwarded it to the National Bank of Redemption to pay the overdraft and provide for this acceptance."

Now that seemed a very good and pious transaction; but it seems that Colonel Walker did not believe in that sort of thing very much, and so he thought he would go into it a little. I refer to page 828 of the record:

"*Q.* You said that you made a large deposit of $22,000 on the 2d of July, 1881. Was that deposit made from the County Bank?

"*A.* I should think it was.

"*Q.* And remitted to the Bank of Redemption?

"*A.* I think so.

"*Q.* Did you obtain the funds which made that money good from R. L. Day & Co.?

"*A.* I could not say.

"*Q.* Can you tell by looking at your check-book of July 2d, or about that time?

"*A.* I find on June 29, 1881, that I had of R. L. Day & Co., and deposited to my credit at the County Bank.

"*Q.* And that was how much?

"*A.* $12,500.

"*Q.* Was there any other large amount near by there?

"*A.* I think on July 1st I drew on them also.

"*Q.* How much?

"*A.* $22,000.

"*Q.* And on July 2d you made this deposit to the credit of the Company in the Bank of Redemption?

"*A.* I don't remember the date."

That is where the money came from that he deposited to the Company's credit.

Now I will refer a moment to Mr. Baldwin's statement.* I am not going to dwell on these statements but for a moment. We have been criticised, in a general way, properly enough, perhaps, by our friend Mr. Ballard, and some criticisms made on our young friend Mr. Baldwin that we do not think are justified,—saying that when he grew older he would not perhaps be so swift, not quite so fast, or something to that effect. Well, now, I am not young in this business, in the trial of cases involving accounts. I find my hair whitening pretty fast, and that I am getting alongside of people who are on the down-hill side of life. But I have this to say in vindication of this young man: I have worked with him now nine weeks, and a clearer head and honester and better purpose I have never seen manifested by any young man. Instead of being ashamed of him here in Rutland, you ought to be proud of him. And if

* See Appendix.

you send him away from Rutland, New York will be glad to have him. There is no use in assailing men in that way. I say this in vindication of a witness that they seek causelessly to assail and to prejudice your minds against. We are proud of him and proud of his work, and I think the jury will agree with us that it has been triumphantly vindicated. This is the way his statements were made up. All you that are fair-minded (and I believe you all are) think of it. How are we to go to work? We considered this matter and said, How will we find out the amount of this deficiency and where it has gone? We do not believe that these books show all the deficiency that actually exists and all the money this treasurer has been using. It is not likely we said in our conference, when Governor Page and Colonel Walker and Judge Prout and Mr. Page and myself sat down and talked over this case—we said that these books show all. How shall we come at it and develop the truth? We said, It isn't very likely that this man wrote down on his own books all the wrong that he had done, and that simply going over these books would develop all of it. Part of it only is there. Then we said another thing. Here is something more. Here are entries we discover that needs must cover other deficiencies, or he would not have made them. Among these was that $19,000 item. We knew that was to cover an outgo of cash. How shall we get the exact truth? Well, we did this; and it is for you, gentlemen, to see whether it was fair and whether it was intelligent. Put your minds upon it. Supposing you were going to investigate this matter, how would you do it?* We first said, We will get all the Company's bank accounts from 1874 down; all the money that the Company received from all sources and that went into bank. We won't say that this journal of the cash has got on its face all the money that the Company has received; because if he wanted to put money in his pocket, he might not make any entry there about it. But it would have to go into the bank, probably did go into the bank, and there we will get trace of it—certainly of all considerable amounts. So we dug up from 1874 every railroad bank account that there was. Then what next step did we take? Why, we went and got all the checks they would give us from the railroad office. Some they did not give us. Perhaps they did not have them. But we got all the checks we could, and took copies of them. And then we took that copy and checked off from each one of these bank accounts every single check. What was the next step? The next step we took was to get the check-book that would show from the stubs where checks had been used and that could not be found. We found the stubs of checks that were missing. Then we said, Go to these stubs and eliminate all that you can discover that have been used for railroad purposes. These stubs will have something on them that will indicate for what purpose the checks were used; even if it is a "C," we will take it for "coupons." So we went on, and eliminated everything used for railroad purposes from checks and stubs. Then we eliminated the payment of acceptances that were entered on the bill-book—all payments on the cash-journal for railroad purposes, all those

* See Baldwin statement, Appendix.

we could trace out. There could be but little mistake about it. Then we got at the interest and discount on acceptances; took that all out. Third, dividend checks, we took those all out; even that which paid for this overissued stock: everything that went even colorably for railroad purposes, even that which he had used falsely, we took out. Then payment of coupons. Then vouchers and requisitions. We took out every single check that we could find that had been given in any way to pay any requisition. We went through all the requisitions; we didn't trust ourselves with the check-books and stubs and with the cash-journal, but went into the requisitions, to see anything that showed as having been paid by railroad money. Then we went through sundry interest charges, charges for payment of interest, perhaps, on renewals of notes, or balance for exchange of bonds, transfers of money from one bank account to the other. Every single one of them, all these we applied to these bank accounts and checked off. Then we said, There remains, as proved on the stand here, a very large residuum that no trace exists of on any book, any record; no possibility of tracing it to any use of the Company. There remained $139,000 that we believed, without a question, had been used, or without any reasonable question had been used for Treasurer Haven's individual benefit in that time. There was some $20,000, as you recollect, Mr. Baldwin said there was doubt about. And that doubt has been confirmed to this extent, that Mr. Haven has been able to prove about $12,000 or $13,000 of that $20,000 used for railroad purposes.

Now, I ask you, gentlemen, if that result was reached by that process, whether that is not stronger, almost, than any direct testimony of living witnesses—these dumb witnesses, speaking only from the written pages.

Taking out this $20,000, the amount left was $139,000. And you heard Colonel Walker's explanation in regard to that. I am stating that the $139,000 was a balance. There was a much larger use, and there were also large credits. For instance, in ascertaining the credits that should go to the Treasurer, this process was followed. There were two kinds of credits—first, credits of deposits made by him; and second, requisitions or bills paid by Mr. Haven out of his own money. Now, in the requisition class Mr. Haven got all astray on the stand, saying that he was charged for everything that it did not appear was paid by Railroad Company money. Exactly the reverse of that was true. We took the requisitions that had been paid and the vouchers belonging to such requisition, and every single voucher that we could find where there was apparently (with a very few exceptions) a check of the Railroad Company to pay for it, those we eliminated; we credited all the remainder to Mr. Haven as having been paid by him. All the doubts were resolved in his favor, and every deposit that by any possibility could be traced out and that was not shown clearly to be a railroad deposit was credited to him. We thought we were dealing very liberally with him in this accounting. And after deducting all these deposits and all credits for these vouchers that there were no actual railroad checks to show that railroad money had paid them—giving him the benefit of every reasonable doubt—yet there remained $139,000 as used by him, Haven, of the Com-

any's money for his private purposes for which he should be held accountable.

Now, then, after the fullest investigation, Mr. Haven struggling to reduce it, what have they done? If you take a fair statement of the account in the sense Mr. Haven has given on the stand, we find this would be the result. It leaves $112,915.14 of deficiency unaccounted for.

Now let us see, gentlemen, where this deficiency was, and who knew about it. Sometimes a truth drops out from a witness unawares that we are rather startled by, let him struggle never so earnestly to conceal the truth; and it is very significant when it does come out. It only shows the truth of the old maxim of Montesquieu. Perhaps he made it broader than I need to here. He laid down the principle, before this republic was founded, the principle upon which rest all democracies and republics; and that is, that men are better than we ordinarily think of or write them; that if left to themselves they will choose the good rather than the bad; that on that principle the rule of the majority rests, and without it no democratic government or republic could live on the earth, because if men naturally turned to and chose the bad under the rule of the majority anarchy would come.

Carrying this principle a little farther, I claim that the natural instinct of a man left to himself is to speak the truth; and even when a man is degraded, the first impulse of even a bad man when questioned is to give a true answer. And there undoubtedly dropped out impulsively from this witness Haven the truth in one instance here. The witness himself (Mr. Haven) states as follows, page 724 of the record:

"*Q.* How soon after your resignation in April, 1883, before it became known as a fact or you knew that there was a deficiency in the treasury of the Company of somewhere in the neighborhood of $40,000?" (And this is the examination of his own counsel.) "What time along in the spring or summer of 1883 did that fact become known as a fact? It has appeared that it was published in one of the circulars in July, and the point of the question is, at what time it came to be known as a fact or a rumor that there was a deficiency in the treasury?"

"*A. It was known to me all the time.* I don't know when it became publicly known, I am sure."

Those are his words. The deficiency—"it was known to me all the time." Why should he not know it? He made it.

And, gentlemen of the jury, this is the witness who, I think we have now pretty clearly demonstrated, has deliberately spoken untruthfully on this stand, has corrupted his books, and then stated falsely about it; has taken the Company's money to the amount of $112,000, and still has it. And this is the man held up for laudation by my friend Mr. Ballard; the man who had been so truthful on the witness-stand that had spoken so truthfully, that had performed his duties with such fidelity. Why, Mr. Ballard carried it to the extent that even in his (Haven's) writing his name there was something about the "M" that had about it an odor of honesty and purity. Why, he would make out this man a real live saint—"Saint Joel." And by and by, if friend Ballard keeps up his admiration and worship of "Saint Joel," we shall find barefooted

Ballard making pilgrimages from Burlington to Rutland to worship at the shrine of "Saint Joel." Ballard the pilgrim! We will have to put a long robe on him and a girdle about his waist, a staff in his hand, and shave his head. Ballard turned friar and worshipping "Saint Joel!"

We ought to be truthful, whether in praise or in criticism. Truth stands the test. Honest men then can test truth by their experiences. Mr. Haven is no saint; nor is he perfectly harmless, or utterly vile and bad. We do not say it. Not at all. We simply say that we are sorry that this man has placed himself in this position; that he has allowed the temptation to grow upon him of using this Railroad Company's money and not distinguishing it from his own. But if that means that a great trust has been betrayed, a great deficiency created, a great burden piled upon him and upon others, it is a greater wrong that he is now seeking to do in trying to shoulder that upon a man who has befriended him, and thus adding treachery and unfaithfulness to friendship and to the long years of companionship between them.

FRIDAY, May 8, 1885.

Mr. BURNETT—May it please your Honor and gentlemen of the jury, so far as we are concerned, the load is pretty nearly shifted from our shoulders, first to the shoulders of our opposing friends and then to the Court, and last to you. I must say that since getting into the argument yesterday I would like to be turned loose about two or three days, without any minutes or milestones to be tied to, and go on and talk about this case. But that cannot be done. I have now only a couple of hours. The Judge keeps the record, and I suppose will pull us up when our time is up. The only question is, out of this great mass of nearly 2000 pages of testimony, what is most important to call your attention to, and what to leave out. We cannot touch upon all of it. Going back over it, it passes out of memory, fades away like the events of the war to those even who took part in it. And now in looking back over it I feel much like the Greek of old speaking of the Trojan Wars—"All of which I saw, and part of which I was." We only recollect certain leading things that stand up like distinct mountain-peaks. We only remember an event here and there. And when you get out of your jury-box and go home on Saturday night, you will be astonished, in trying to recall this case, how little of it remains in your minds. Only a few of these features that stand out strongly—leading things; and by those really your judgments will be formed and guided. An old writer once said, instead of reviling man for being ignorant it was creditable to him that he knew so much when we recall how little we learn and how much we forget.

I want speedily to go on with a few other incidents in this case. You will remember that we had, in our review of the case, brought it up to the point of the matter of deficiency, and had established, we think, from the evidence, that the deficiency rested with Mr. Haven; that the examination of the books, that the testimony of the witness himself, that the analysis of the experts all demonstrate and prove this. It is a singular fact that after going through and making up this statement by Mr. Baldwin which was supervised and superintended by Mr. McNair, the Assistant Controller of the Erie Railway, and without regard, as Mr.

Baldwin swears, to making any balance, or to making anything come out even, but with simply an effort to ascertain the deficiency as it might be —it is a very singular and significant fact that a certain result is reached.

Remember, please, we first eliminate in this examination all that the books showed that was used of the railroad funds in the banks, all that the books showed had been used for railroad purposes, all that the checks showed, all that his cash-journal showed, the stubs of the check-books and the bill-book of acceptances, or rather the bill book (that book in which there are the acceptances to be paid), and all that the requisitions showed that the Company paid to individuals for supplies, etc. All that had been eliminated. Now, if that was all that there was in the record that persons going to the books could trace out that Mr. Haven had received and was to be held accountable for, that would not show a deficiency very much. And another significant fact that Colonel Walker brought to your attention was that even up to April, taking his books, no deficiency appeared, and there had been counter-entries, until he was forced to sit down there and make entries himself of actual transactions in April or May—they are dated April, but date back some time—until he was forced to make actual entries that had not appeared before at all. And they would not appear by the bill-book or any record in his office. And not until these funds of the Company were sought for by the bank accounts did the fact become revealed that there was a deficiency of $112,000. Then taking the funds of the Company that were left in the bank, we found that there was no way that they had been applied to railroad uses. Therefore we say that they had been drawn out on his check—drawn out by him. Apparently, it may be said, if you went over and simply examined the checks—apparently it might be said that they were for railroad purposes, until you lay them down on the accounts and show that they did not go for railroad uses.

Now, what is a most significant feature of this? And this must have been in your minds. What came into the books only showed a deficiency of $40,000 and odd. It might be said that if there is a deficiency that appears on the books of $40,000 and odd that was for things that appeared, how could there be a debt of Governor Page against the road? Because that deficiency is accounted for by these outgoes that are already here on the books, and Governor Page's claim does not appear on the books. The explanation is that Governor Page paid certain debts of the Company, and handed the vouchers to the Treasurer to make his entries from. Mr. Haven entered up these notes, etc., as paid, but did not give Governor Page credit on the books for the cash he furnished. By this method he replaced a portion of the cash he had taken, and by so much reduced the cash shortage as shown by his journal. Gentlemen, it is simply accounted for in this way. If in addition to this deficiency it is true that Governor Page has a claim of $43,000, there is just that much to be added to that account of deficiency. If that is a just and proper claim by Governor Page, and you shall allow it as being a debt due him, and Mr. Haven has failed to put down on the book these payments as made by Page, the deficiency is increased that much. We have made an examination of these things without regard to how the end should

come out; it is singular, however, how it has come out. Yesterday I showed you how, taking the whole account and making corrections in a fair and just way, it left a balance against Haven of $112,000. How is that accounted for on the other side—how could that be? If you add the balance due Governor Page of $43,821.86, and the cash shortage that appears on the journal to J. M. Haven, $42,913.36; then the account that there never has been auy answer made to—you recollect it: the shortage on the Vermont Central notes—of $3274.42, and add the entry in June 1879 to cover his deficit of $41,000, this item of $19,472.49; add his debit of $961.95 which he admits was a mistake. Balance on these bonds sold by Pickering & Moseley of $1,938.57—you recollect in regard to those—he sold and did not account for. So that taking the $1938.57 and adding the mistake, $961.95, and then adding the discount on acceptance not used and which he had taken credit for, $239.17, and the items foot up as follows:

Balance due Governor Page	$43,821.86
Cash shortage of Treasurer as appears from journal	42,913.36
Balance of Central Vermont notes	3,274.42
Fraudulent entry of June, 1879	19,472.49
Balance of bonds unaccounted for	1,938.57
Error—interest charged twice	961.95
Discount charged for note not used	239.17
	$112,621.82

The difference between what we figure out to be his deficiency and what these things would make as causing the deficiency makes just a difference of $358. It is rather significant. It may not be conclusive, but I venture to say that when you thiuk there must be some relation between the figures aud see how nearly they come out, you will say, There is the solution to the problem. It is a very significant fact. Let us turn to another matter.

It has been a little singular here—and you must take these leading features as they come up—that while a deficiency appears against Treasurer Haven on the books of the Railroad Company, which Mr. McLaughlin, their own witness, swears here that he believes *now* to be correct as to the deficiency, these gentlemen come in here as sworn counsel of that Railroad Company, to whom their first duty and allegiance is due—a duty which Lord Brougham, you will remember, in his defence of Queen Caroline, placed so high. He placed it before country; it took precedence of patriotism, of all personal interests—sinking himself. The lawyer, he said, should be true to his client and stand simply as the representative of his client's interests which he stood forward to advocate. How stand these gentlemen in this case? It is significant. They place the defence of that man Haven before the interests of the client they are sworn to serve. Instead of standing by their own books and advocating and sustaining a claim of that Company against Mr. Haven, they bring him in here as a wituess, to establish the fact on that stand that that Railroad Company is indebted to him. They turn from their trust and

advocate the witness as against their client. I read from the record; and it was a most astonishing spectacle. In Vol. XIII., p. 765, Mr. Haven's testimony is as follows:

Mr. BALLARD—"*Q.* Whether or not in the end as a result you had overdrawn the money that belonged to you for private purposes?

Mr. HAVEN—"*A.* My understanding is that there is money due me from the Railroad Company.

"*Q.* I am asking of your own knowledge. You may tell the jury in the first place whether or not you endeavored to ascertain how the account stands between you and the Railroad.

"*A.* I have.

"*Q.* And so far as you have been able to ascertain from your own examination, what did you understand the fact to be?

"*A.* I understand that the money that I have deposited to the credit of the Railroad Company, and the acceptances I have paid of theirs, and the bills I have paid of theirs, and all other things that I have paid for the Railroad Company included, is more than all the money that I have received by way of drawing on the Company's account.

"*Q.* Do you understand that from your examination to be the fact at the time your treasurership closed?

"*A.* I have examined that.

"*Q.* That such was the fact at the time of your—

"*A.* It was the fact at the time as I understood it.

"*Q.* Of course there has been no change in it since; but how do you understand the condition to be at this time, from your own knowledge, as far as you have able to ascertain by examination?

"*A.* I understand that the Company are in debt to me."

Is it an extraordinary picture that Colonel Walker drew, that they were sheltering Mr. Haven under the petticoats of this Railroad Company? More than that; the counsel have been getting under the petticoats of Mr. Haven and deserting the road. With their own books unchanged, giving evidence of a debt against this man of more than $40,000, they bring him on the stand and cause him to swear that their client is indebted to him—to swear away their client's money. Think of it! A case that requires the perversion of the highest duties of men. Ay, the perversion of the sacred duty of counsel must be desperate indeed.

One step further, gentlemen, on that same line. I have said that we take the facts of this case from the witnesses they introduce. If the deficiency is with Mr. Haven, it was announced in the opening, changed somewhat in the final argument of the gentleman—but it was true as he stated in the opening—if the deficiency is with Mr. Haven, it cannot be with anybody else, and it is simply a question of where it is. Now, their own witness, Mr. McLaughlin, on the stand gives this testimony as to the correctness of that entry of Haven's indebtedness, and after his further examination through these two years last passed. Here I called his attention to a certificate, if you remember, in the journal:

"*Q.* Please read that entry.

"*A.* J. M. Haven, Dr. to Cash, being for an amount of cash here

called for, less the amount found on hand, thus: Amount called for, $45,200.13. There was to the Company's credit in the Rutland Bank $5 673.60; the balance carried out at $39,426.53.

"*Q.* Who made that entry?

"*A.* I made that entry.

"*Q.* From what did you make that?

"*A.* From the direction of the powers that were."

He had just come fresh on the stand, fresh from the influences of the other side. And you recollect that was the way he was inclined to put it to you: that he had made these entries under the direction of Mr. Page, and perhaps of Mr. Williams. Now let us see how he goes on. Mr. Ballard asks, "Whom do you mean by that?" *A.* "The President and Treasurer."

Mr. Ballard wanted to emphasize that remark. Then I say:

"*Q.* Do you mean to say you simply sat down and wrote that in the book because some one told you to write it? Is that what you want to be understood here, Mr. McLaughlin?

"*A.* I do not remember the circumstances; I should not have made an entry unless I had been directed to; they are not my books.

"*Q.* Mr. McLaughlin, I think you must fairly understand the question. Do you mean to confine your answer here to the statement that you made that entry simply because somebody told you to make that entry? Let me put it in another way, to be perfectly clear. Let me add, don't you know the fact that you had gone over the accounts preceding these with more or less care, and that you yourself found that to be the amount of the deficiency in the Treasurer's account?

"*A.* I do know that; yes, sir.

"*Q.* Now, therefore, was it not upon your ascertaining that fact from your own investigation that you were directed to make a proper entry on the book to balance it?

"*A.* Certainly; after that I was directed to make an entry to balance.

"*Q.* You had ascertained that deficiency in the Treasurer's account?

"*A.* *Precisely so.*

"*Q.* Did you or not, and do you not now, understand that to be the correct entry upon that book?

"*A.* Of course it is the correct entry. It might have been entitled otherwise, if I had been so directed or been left entirely to myself.

"*Q.* What change would you have made if you had been left to yourself?

"*A.* If there was any doubt about the matter, as to who was responsible for it, I should have put it to suspense account.

"*Q.* Was there any doubt in your mind at that time?

"*A.* I don't think there was at that time.

"*Q.* Now, coming right directly to that, is not the only doubt that exists in your mind about the correctness of that entry arising from the claims that have been made by Mr. Haven in respect to the deficiency?

"*A.* The doubt that now exists, what there is, arises from what I have heard on all sides from Mr. Haven and others.

"*Q.* Have you discovered in the books or in the papers that you have

gone over anything that shows that that deficiency is anywhere but with the accounts of Mr. Haven?

"*A. Nothing whatever.*"

That is the kind of experts you have got. They are not ours. You may import them from England, and bring as many as you please, and have as many helps as you are a mind to; but the man that is an honest man, and that you kept at work down to the day of argument, from some time in 1883 down to this day and year of our Lord 1885, says he has discovered nothing whatever, but that the deficiency is with Mr. Haven. That is their witness; not ours.

Gentlemen, if you regard (as I believe every man here will conscientiously) the oath you have taken to find the facts according to the testimony, you will find that deficiency rests with Mr. Haven, where the plaintiff has proved it, and there alone.

What next? What is still more significant, taking the facts? Think how little circumstances fit in. This harmony of truth running all through life, and the relations of life. Recollect that Mr. Williams came here, replacing Mr. Haven, under a claim that he had been guilty, first, of corruption of the books and the overissue of the stock, and, secondly, a claim of deficiency in the cash. Now, wouldn't it be very natural—could it be possible, if Mr. Haven was not responsible for that deficiency, and he was going to that railroad office day after day when Mr. Williams was in there, and Mr. McLaughlin tells us that Mr. Haven was there day after day looking over accounts and seeing what he could make out in justification of himself—if he was not the man who had committed the wrong, but somebody else was, is it in human nature to have kept silent, to give no sign? And yet what does Mr. Williams say? Just a single word. There is no question about his truth.

"*Q.* Now, the matter of the general account brought up, did it not, a claim upon the part of Mr. Haven that the funds of the Company laid with Governor Page?

"*A.* I never heard Mr. Haven make that claim.

"*Q.* Did you know that he had made such a claim?

"*A.* I heard a rumor that he had made such a claim."

Working day after day, side by side; never a hint; not a word.

But one step farther. We have some direct proof—not only the negative proof; but when being faced with the charge not only of the overissue of stock which he swore Governor Page was not responsible for, but when asked the direct question by Judge Prout of your city, whose word no man will question, what did he answer?

"I made the suggestion to Mr. Haven with reference to getting the injunction to which I have alluded dissolved, to which he made no reply whatever. I then asked him the question if Governor Page had been using the funds of the corporation. His exact language in reply was, '*I can't say that.*'"

Gentlemen, he had not got himself up to the point at that time, at least, of trying to shoulder his sins onto the shoulders of his friend. "*I can't say that.*" If he could say it, was not that the time to speak? Would he not have spoken?

You have heard some reference during this trial to statements "A" and "B." Well, they are important documents in this case; important in many respects. They are papers made by the persons whose testimony perhaps is the most direct on the issues here; and they throw light upon the transactions in controversy. About one or two things there is no conflict. It is sworn by Mr. Haven as to the time that he thinks these were made, he says, "I presume 'B' was the first;" he swears that he did not remember much about it on the first examination, but finally he comes to the conclusion that 'B' was made up first. If that is so, it incontestably establishes one or two things about these papers. First, that Mr. Haven, with whom this was left—he says the matter of keeping the accounts between himself and Governor Page was left to him; he was there for the purpose of keeping the accounts of the moneys of the Rutland Railroad. That is what he was paid for. It was not his business to manage the finances of the Company, to go out and get acceptances taken by the various banks and meet maturing liabilities; but it was his business to keep account of the cash transactions, and to enter them on the books—to keep trace of them, and if any were omitted, any failure to make returns or reports to him, it was his business to go or send after and ascertain the facts. It has been said that Governor Page did not give him full information. Well, if that is so, it would not excuse the Treasurer. It was his duty to go after the information and get it. Governor Page was looking after the general management. And these papers "A" and "B" establish that Haven did keep memoranda or accounts of all those transactions; and he swears that he kept memoranda of them. And in July, 1880, he made up the sheet "B," which covers transactions of which Governor Page had been in control and was reponsible for from July, 1878, to July, 1880. And as Mr. Haven has said on the stand here, he being accountable for what the books would demand him to answer for, it was necessary for the protection of his own pocket that he should keep that memo. accurately and not have any mistakes about it; especially mistakes against himself. He was very likely to see to that. These papers show another thing, namely, that he was willing at that time to shoulder upon Governor Page a large amount of money, nearly enough to cover the deficiency in this case. If you, gentlemen, as I presume you will be allowed to do, take these exhibits "A" and "B" into your jury-room, you will find that things were left off from statement "B" and that ought to have gone on there as paid by Governor Page, and that he, Haven, subsequently put on "A" more than enough to have wiped out his deficiency. Just trace them down. Take them to your jury-room. You will see those pencil memoranda at the bottom of "B," item by item there, that Governor Page called his, Haven's, attention to, that were not originally entered on "B," but were finally put on "A" by Haven, thus conceding that Governor Page would have been wronged if he had settled by "B." I have not figured up the amount.

Haven took "A" and made these corrections. Is it astonishing, the claim we make, that if he had left off all these items, sixteen items left off, amounting to $77,000—I don't know whether all these are put back on "A;" I think not quite all: you can tell yourselves; this is a matter

that you can figure—is it an astonishing claim on our part that Governor Page on subsequent examination found five items on the two sides of statement "A" that were still not correct? And is it not in harmony with those dumb speaking facts, truths—is it not in harmony with that, that this man knew when he left off sixteen items from "B" that a part of those should have gone on there, and that he was willing that Governor Page should at that time be made to carry a part or all of his then existing deficiency? He finally put them on, acknowledging the mistake. Now, all we claim in relation to those papers, and what will entitle us to a verdict on that branch of this case beyond a question, is simply that those items marked at the time were erroneous—and my brother Ballard went too far, forgetting, as we are all liable to do, when he said that the first time that those marks or crosses appeared in evidence was after the commencement of the trial in this case. His own witness, Mr. Williams, says those crosses were on the debit side of "A;" when he examined it he didn't remember whether he saw the credit side; he saw the debit side of "A," and these crosses were there when he examined the paper in June, 1883. Brother Ballard is honestly mistaken, doubtless, about that, but mistaken nevertheless. Now, then, is it too much for us to claim, gentlemen, that Haven left off those five items again, or that he left off some and added some erroneously? And is it not corroborated by the fact beyond controversy, beyond question, that when Governor Page comes on the stand and takes up paper "A" and paper "B" and goes into those items, the ones that he had made the objection to, the ones against which stand the crosses, the $11,000 item, the $5000 item, and the $16,000 item, carried out here at $32,000, but one half of which he claimed he had accounted for in February; that only $16,000 should there stand; that when he went through those items he made that mark; that Mr. Haven, when he came on the stand after Governor Page, had item by item taken them up, and furnished to you the acceptances that had paid those things and for which he claimed credit, inch by inch revealed to you here, as he revealed to Mr. Williams the truth about them, and Mr. Haven when he comes back on that stand *meets no one of them.* The answer he made—I am not sure that I give the exact words, but certainly the meaning of his answer was, when Mr. Ballard called his attention to Governor Page's specific testimony putting in the checks, acceptances, and the vouchers, Haven answered: "I am not convinced, but my statement about it was correct." We are not seeking to convince your witness, Mr. Haven; we are convincing this jury. "I am not convinced." But does he nndertake to apply one of these acceptances, these checks, to anything else? More than that: after Governor Page, in reference to the Park Bank, said that he had paid in there $5000 to Haven's credit, and that he had borrowed it of Mr. Borden, Haven in answer said, "I have a letter which will clinch that matter."

Mr. BARRETT—You say he introduced ?

Mr. BURNETT—That Mr. Haven introduced that.

Mr. BARRETT—I believe I introduced that letter; we had the letter.

Mr. BURNETT He had answered when he was on cross-examination and said he had a letter at his house which was a complete answer. Did

he make any answer to that when Governor Page said that that letter referred to a check that he had drawn in anticipation of Mr. Haven having $5000 to pay, and when he was able to get the money and had taken it to the Park Bank and deposited it to Haven's credit the check left with Haven should be returned, and was returned to him? Did they bring Haven back to make reply? They had learned wisdom from experience, and they were afraid that Mr. Page might from the reservoir that they were afraid of draw that check. And they were dumb from that time to this. Not a word in answer to that nor in answer to what Governor Page had said in regard to it. Sometimes silence is more eloquent than any words which tongue can speak. It is when a man is charged with an offence and some one says, Did you do this? and he hangs his head. That is eloquent silence. When a man is charged with certain items on that paper "A" as incorrect against Governor Page, and he, Governor Page, brings in the checks that paid them, one by one, and hands them to the jury, and that witness who made paper "A" comes back on the stand and his only answer is, "I am not convinced," the jury will believe no other answer can be made. But there is more than that about these papers. I wish I had all day. I have got to hurry on. This is an interesting case. Mr. Ballard defined *assumpsit* as like the providence of God which covered all things. Well, I don't believe that his Honor will lay down the action of *assumpsit*, broad as it may be in the State of Vermont, as equivalent to that. And it seems to me that they have mistaken the name. Our opponents have got things mixed; they are proceeding as though this were an action of *assumption* and not *assumpsit*. It has been one of assumption all the way through. My brother Ballard assumes like Don Quixote of old—I thought he had been studying Cervantes on evidence. He would take up a fact, and though it were a windmill he was willing to swear with vehemence that it was a castle which he must attack; and like Don Quixote he tilted at it, and was not convinced but that it was a castle still. How he tilted at the exchange of checks for a night! After they had raked through his personal bank account, and had found a check or draft that he had indorsed as President of the Rutland Bank and raised money for the Rutland Railroad Company, they thought there might be something wrong in it or they might torture it into something wrong, and then tilt at it. If they had ever established their $30 item, what a speech there would have been from Ballard! The amount of quotation and poetry that has been lost to the world, gentlemen, is something sad to think of. And we are unfortunate in that respect, that that item dropped out, and that Ballard dropped down, his chair not being under him. The quotations from speeches of Othello and Desdemona, and crying for the handkerchief, which we have lost, and by which we would have been so thrilled, is sad to contemplate. Brother Ballard and his associates all through where they found a thing which they did not understand assumed it was wrong. They took the slightest thing and they called it a big one; and they went back five, ten, or twenty years and raked up all the history of it.

Gentlemen, it is a maxim which his Honor will lay down to this jury, that in the affairs of men the law presumes that where an act is equally

susceptible of either of two constructions, one of innocence and one of guilt, the one of innocence and upright conduct is always to be presumed. That is law. His Honor will charge it to you as law. Our opponents have followed exactly the opposite rule. They always presume guilt and wrong in every transaction.

"Trifles light as air
Are to the suspicious confirmations strong
As proofs of holy writ."

Mr. BALLARD—You have not got that right.

Mr. BURNETT—I have only one word changed, I think—"suspicious" for "jealous." My word suits me better here.

"Trifles light as air
Are to the *suspicious* confirmations strong
As proofs of holy writ."

Now let us go on. I want to refer to this statement "A." Brother Ballard in his haste and his suspicion said that not a word had appeared as to these check-marks on "A" until that paper was produced on the stand.

Mr. BALLARD—I think I said that Mr. Haven had not.

Mr. BURNETT—Your words were that it had not cropped out in this case until the paper was produced on the stand.

Mr. BALLARD—I said that Mr. Haven never saw them.

Mr. BURNETT—That might have been your intention, and probably was. But if they were there, I think Mr. Haven had seen them. He is not likely to have forgotten.

Now, when Mr. Williams was examined in reference to this, what did he say? I read from page 1005: "Now I show you the credit side of the statement marked "A," in which the last entry is, memorandum check, etc. My recollection is they were at the time I examined it."

Now it simply shows, when he examined that, when the controversy was up as to those items, that there were marks against them as not correct. He took them up and carefully examined them. He referred to them in his report, which is in evidence. It may be that you will be allowed to take that. He takes up those items just as Governor Page did, and goes over them one by one. I won't have time to go over these items of Williams's report. This report is evidence made by their own witness. No question about its truthfulness. It has never been met. The same thing was testified to when Page was on the stand, and not contradicted when Mr. Haven was brought back, nor was he brought back to contradict it.

It is important, however, in another feature of this case, that the rightfulness of that paper be established in your minds.

We claim as matter of law (and I suppose it is simply necessary to call your Honor's attention to that fact) that this statement "A" and the memorandum receipt that was given—that that is not an estoppel; that if there was any mistake made at the time or discovered afterwards, it could be corrected afterwards, and these mistakes be shown; that a receipt is not conclusive between the parties. That is so old and fundamental that I don't stop to argue any such question to your Honor.

That memorandum receipt does not shut us out. It is shown on the face of the paper "A" that that was given, not as a settlement, not as a finality. You will see right at the foot, "Salary $5000: *memorandum* check $13,163.97." No finality about that.

Now, gentlemen of the jury, can you doubt that the statement made by Governor Page, with the corroborative testimony that has been introduced here, is exactly true—that he allowed that to come in at the time, that he was burdened with many cares; that this road at or about that time was in much trouble, great loads to be carried. The eight-per-cent bonds had not yet been taken up. The fixed liabilities of the Company were still larger than its income. The load had to be carried. He did not stop for his personal interest. More to him than personal interest or personal affairs was it to lift this property out of its embarrassment and kept it on its feet. Having faith in his friend (not then distrusted), he simply said, "Why, this may be right: I may be mistaken about it." Here were millions of dollars, as it has come out in this trial, of paper which he had indorsed; thousands and thousands of dollars that he had raised for this Company and advanced to it, on his own personal credit; notes with his own personal collaterals deposited to keep it on its feet and moving. Was he going to stop, believing that his friend might be right and these be honest mistakes, and, if not, that there were ways of straightening it out, and it would be all right in the end? It was more important to carry this road and keep it alive than to stop to investigate whether paper "A" was right or wrong. If he could not save the Company, his claim was not good for anything. The first thing, therefore, for him to do was to make the corporation live.

Now, I say, is there anything in that long argument that he was not pressing this claim if he thought he had a claim? He rested on it and let it be until he could look it over. He is a man of loose business habits in his own affairs, and perhaps sometimes in the affairs of others, in the multiplicity and great burdens that he carries. Slow—not prompt. That might be. But I do not believe one of you, gentlemen, in all the proofs submitted, will doubt his story, that he looked over "B" and put down that pencil memorandum of items omitted (most of which are put down by Haven on "A"), and that when he looked over "A" again there were five other items wrongly charged to him, and two that should be added to his credit. It seems to me that that is the true story as to that.

And now I want to cite you a word from the record. Nobody swears there were any check-marks there until produced in court, says Mr. Ballard. He simply made a slip, as I am likely to do, or anybody. But those are Mr. Ballard's words. The truth is, they were there when Williams examined the paper in 1883, as we have seen. You will recollect that a committee had been appointed, and that Mr. Williams was the committee to examine this claim. At a meeting of the Board of Directors Governor Page had called this matter up, and said there was a mistake, and he had a claim against the Company; and Mr. Williams was appointed June 22, 1883, to examine into and report upon it. Mr. Haven

swears on the stand, when that matter was called to his attention, and the report that Williams had made,—"I did not know that there had been any such reference made, or that Mr. Williams had been appointed for any such purpose: never heard of it until his report was shown me since this trial commenced."

Now, that is straight and positive and square, isn't it? Gentlemen, can you believe that the witness there stated the fact, when I read you the next? Recollect the words—"I did not know that there had been any such reference made, or that Mr. Williams had been appointed for any such purpose; never heard of it until his report was shown me since this trial commenced."

On page 1004 I read from the testimony of Mr. Williams, their witness, not ours:

"*Q.* Mr. Haven has said that he did not recollect of your notifying him. State what, if anything, you did in the way of notifying Mr. Haven.

"*A.* I went with Governor Page to the Bates House. We met Mr. Haven in the corridor. Governor Page informed Mr. Haven what we would like to do to act under the vote of the Directors."

Never heard of it until the trial. Governor Page informed him they were going to act under the vote of the Directors.

"And Mr. Haven manifested a willingness to do so, and agreed to come to the office in the afternoon for the purpose of going over the accounts."

Can it be doubted in your minds that he agreed to go there? Would not Mr. Haven first ask, What vote of the Directors,—what accounts are we to go over? In June, 1883, after he had resigned, these gentlemen went to the Bates House, and Governor Page informed him in Williams's presence. And it is not Page that is speaking, but their own witness, Mr. Williams:

"Governor Page informed Mr. Haven what we would like to do—to act under the vote of the Directors, and Mr. Haven manifested a willingness to do so, and agreed to come to the office in the afternoon for the purpose of going over the accounts; and after Governor Page went away Mr. Haven expressed to me a perfect willingness to be present and do what he could to adjust the matter."

Adjust what matter? Can there be any doubt about it? And yet he never heard of this until it was produced on the stand; never heard that Williams had been appointed. Think of it, gentlemen! I don't say that he deliberately testified falsely about that. A long ways the human mind is carried by personal interest. Dwelling upon a thing day after day, men come to believe what it is to their interest and wish to believe. And in my experience in the trial of cases each year I grow more liberal in my judgment of men about what they themselves believe or actually forget. It may be that he now has forgotten, that he now does not remember, and that he now believes that he never heard of it. That may be. But nevertheless you will not doubt the fact that

that matter of the vote of the Directors was called to his mind; and that that matter of the difference and the claim of Governor Page was called to his attention, and that he did express to Mr. Williams a willingness to adjust the matter. And the further testimony of Mr. Williams here is uncontradicted that from the Bates House, either at that time or afterwards, they went to the railroad office and started upon an investigation, commenced to talk it over. What would they talk about? Before they fairly got into the books, Mr. Haven was called away and never came near again. He was there about half an hour. It is fair to say, from Williams's testimony, that they talked about nothing else but this claim of Governor Page in this half-hour; that they did not commence going into particulars until he was called away. That he knew what was under examination there can be no question before this jury. And Mr. Williams says in regard to the claim of Governor Page, in his report, that Governor Page exhibited to him papers and vouchers establishing his claim, in his judgment. The only trouble with Haven then was, as it was when he came out on the stand, that he knew he could make no answer to those checks and vouchers that Governor Page had; and he simply stayed away because he could not answer. And then there was not one word from him on the stand to answer these vouchers and checks produced by Governor Page. That is all there is of it. His mouth was closed, as it is closed here, by the stunning force of truth. He could not make any answer.

I want to read a little further from brother Williams. As I go on in this story, so much comes up like recalling events of the past; they begin to gather as you catch up a thread, and it draws to you all the other fastened threads. And I know not where to stop, and what to leave out. But let me, in closing this matter, read a little more from their witness.

"*Q.* You thought this claim was a right one of Governor Page's?

"*A.* Yes, sir.

"*Q.* And you still think so?

"*A.* I have no reason to doubt it."

Gentlemen, I have but a word to say upon the accounts which have been put in, and the items of which have been so fully covered by my associate, Colonel Walker. Since they put in those accounts, very much that was important before has dropped out of this case. We never knew until the close of Mr. Ballard's speech, just at its close, what their claim was or was going to be in reference to the mutual accounts between Governor Page and the Railroad Company. That had been studiously kept from us. We have always thought, and I think this jury will have come to this conclusion by this time, that there never was anything in this case, in this great lawsuit which they have brought, except the question of where the general balance was; whether Governor Page owed the Railroad in handling this money as chairman of the Finance Committee, or whether in putting up his personal credit for the Company and paying money for it when he was trying to keep it from bankruptcy, a receivership, and ruin, the Company was indebted to him. That's all there is

now for you to determine—whether in going along and handling these millions and millions of dollars there still remained money in his hands or an obligation on the part of the Company to repay him advances he had made for its benefit.

Now that is all there was of this case from the beginning. And had these gentlemen, in a fair way and, as we think, in a lawyer-like way, left out all that old stuff that never had anything to do with the case and never ought to have been brought in—all this old trusteeship, trying to dig something out of accounts and throw mud in the case—we could have tried the real issues in this case in a week. It is all there ever was in it.

When they come in with their final statement of the acceptances, exactly as we state them, as to the general amount used (not used and accounted for immediately), it foots up exactly what we footed it up, $370,000. And that we accounted for; and they do not differ from us in that statement, except, as I shall show you, in one matter. Their claim puts it in $370,000. As to the Cheshire rent, they make it just as we do, $290,937.

As to whether Governor Page was liable on these acceptances which he had been allowed to use and afterwards destroyed, no claim made about them. Dropped out as though they never had been in this case. And at last when they come to put in their sheets, they are not there. Not a bit of controversy about them. As to the use of 180 and 185 or 187, they claim nothing different from what we admit. Not one scintilla. It is all there. The only question is about a few additional acceptances; and that matter Mr. Walker went over with, and we produced the vouchers, and the vouchers and papers showed clearly that they had been for the use of the railroad; and Governor Page did not put them into his account, because they settle themselves. They were not put in paper "A" by Mr. Haven, and they are not proper to come in now. Like the cash item $4800, and the $9300 item, we produced a check in Haven's handwriting. The others Colonel Walker has gone through with and disposed of.

And now comes this simple question on the general account that Governor Page has put in his claim for: whether his demand is right, and you believe him that there is $43,000 and odd due him in that general accounting; whether you believe his statement or whether you believe the statement of Mr. Haven about it. If you take Mr. Haven's statement, perhaps they might be able to wipe it out. But if you believe Governor Page, and if you will take the vouchers that he has submitted to you, the corroboration item by item, you will find that there is that much indebtedness; and it will be a pleasure to you, I believe, if your consciences and your judgments approve and you find that that is an honest debt of Governor Page against that railroad, to give him your verdict.

You will feel, I think, as his counsel feel, and, as I think, the world at large feel that have seen something of this case, that it was a cruel sort of fight; and that here was a great corporation moved by animosity and malice behind it, and its funds ready to their use for them to draw upon,

and they not suffering. Moved by that enginery, they have made a cruel fight against an individual, who has had to defend himself at a heavy expense, every cent of which he had to draw from his own pocket and take from his family. It is an uneven fight.

And if, in your judgments, you can find that it is true, you will gladly give us your verdict. We ask it only then, ask it only if in your judgments —for we believe you, gentlemen, to be upright, honest men—if you give judgment against us, we shall still believe you have done what you believed to be your duties; but it would be shrinking from our duty not to say to you it is with firm confidence that we turn this case into your hands, believing that the evidence here has swept off this covering of malice, this covering of doubt, of distrust, that rested over his fair fame and over his relations to this Company when we commenced this investigation.

When we came here the snow covered all your hills. Not a spear of grass, not a shade of living green could be seen. But as the weeks rolled on and the great sun came out in his strength and swept away the cold covering and warmed up by his brilliant rays these hills of yours, they began to glow with their green verdure: like truth in this case, whose bright warm rays have beamed here and swept away the covering of distrust and doubt. And, fellow-citizens, jurymen, I can hardly speak of the importance of this your verdict to our client. It sends him forth, if you can find it in your consciences and your judgments to render your verdict in his favor, a vindicated man. He then walks about with upward face, looking at the sun, as man was created; not like the beasts of the field: they look downward upon the earth. I met in the incidents of this trial one touching thing, a letter from an old man whose vision had almost gone, so that he could not write straight across the paper in even lines. His letter read: "I have known this man; I knew his father before him; child and man all his life I have known him. At night my old wife and myself kneel down and pray for him; and I have faith that in this wicked attack that has been made the honest men of Vermont will divine and find out the truth, and that he will be vindicated before his fellow-men." We believe it; and that as he goes about among his fellowmen they will take him by the hand and say, "God bless you; you are under no danger before honest men of Vermont and before upright courts."

And, fellow-citizens, it is more than you can compute. It is more than money can measure. It is not exactly what was said but yesterday—that he is fighting for his life. Great God, gentlemen, there is something better than life! It is to be honest before your fellow-men, to look them with clear eyes square in the face, and have them come up and take you by the hand and say, "I honor, I respect you." Ay, fellow-citizens, if your verdict shall be in his favor, when his little children shall gather about his knee his lip shall not quiver, nor the blood come to his cheek when he looks upon their innocent faces, because there stands a stigma against his good name that can never be removed. And we put it to you that if the careful and conscientious investigation of this evidence, and that alone—not anything that may have been said by counsel, but fear-

lessly standing under your oaths to your Creator and doing your duty as you shall find it incumbent upon you to perform it—you can find for the defendant, so find; not otherwise.

And now, if your Honors please, to the Chief Judge and to his Associates I beg to express my thanks for the courtesy and consideration that I have received in the course of this trial. I came among you a stranger. I first thought my welcome from my adversaries was a little rough; but that has all passed away, and I thank them for many acts of kindness. And I thank your Honors, and you, gentlemen of the jury, for your patient attention.

CHARGE OF HIS HONOR JUDGE VEAZEY.

GENTLEMEN OF THE JURY: I am sure you will be glad to find that one branch of this case is to be made comparatively short. The thorough presentation which counsel have made in argument of this case to you has, as I conceive, very greatly relieved me of the necessity of that detail in presentation which would otherwise be required. And I expect to bring my instructions within a comparatively narrow compass.

This is an action of assumpsit, to recover money which the plaintiff claims the defendant appropriated while conducting the plaintiff's business as its agent—money belonging to the plaintiff.

The defence is a denial, and a claim that the plaintiff company owes the defendant instead of the defendant the plaintiff.

It appears that the defendant was a director and the president of the plaintiff company from some time in 1867 to August 1883, and as such was prominently engaged in the administration and management of the plaintiff company during the whole time. It is not disputed but that at the close of his administration there was a deficiency in the cash of the plaintiff company to the amount of about $40,000.

During his administration until near its close J. M. Haven was the treasurer of this company. In this suit the plaintiff makes two kinds of claims:

First, for certain profits and money advantages which the defendant realized during his administration, and which the plaintiff says were realized in the administration and in such a way as to make the defendent chargeable for them.

Second, for money alleged to have been appropriated by defendant and not accounted for.

These classes of claims are subdivided and itemized in the plaintiff's specifications, and these items will be taken up in their order, the claims of the respective parties stated, and the rules of law applicable to these claims.

I do not deem it the province of the Court to undertake to restate the evidence in the case. Our duty will be best discharged by stating the respective claims, and only in a general way what features of the evidence there are to support these claims. And I wish here, at the outset, to caution you against seizing upon any expression we may use in calling your attention to the evidence, and giving it undue prominence. The decision of the facts belongs solely to you. It is our duty to show you as well as we can their legal application to issues in the case; to tell you what the issues of fact are and what the law is.

The facts lie in the evidence given you in court. You are not to take them from the Court, nor from counsel, and certainly not from any outside source. Nobody has heard this evidence as you have heard it. Nobody has seen these witnesses as you have seen them. All others who have heard the evidence and seen the witnesses have heard it and seen them from a standpoint different from yours. Nobody

has been under the oath that you took. Nobody has the responsibility that you have. Nobody's opinion upon the evidence should have a feather's weight with you. In dealing with the evidence, if we should tell you that you ought to decide the case, or any branch of it, one way or the other, it would still be your duty to decide it upon the evidence. In weighing arguments of counsel, which you should do, be very careful and distinguish and discriminate between counsel's arguments upon and about the facts and counsel's statements of facts in dispute. Be equally careful to discriminate between fair, sound, legitimate argument and fallacious, unfair, unsound argument. Disregard with severity anybody's and everybody's thought, feeling, or desire about the result of this case, if peradventure you should know, which I trust and hope you do not, outside of parties and counsel, what anybody's thought, feeling, or desire is. This is a money dispute between this plaintiff and this defendant which you and you alone, under the guidance of the Court, are instructed to decide, and to decide according to your oath of office.

Somebody has had the money of this plaintiff and not returned it. Has the defendant any of the money of the plaintiff which he has not returned? Is the question arising upon the plaintiff's declaration, if so, how much, if not, then is this plaintiff owing the defendant under his pleas in offset. These are the ultimate questions to be decided, leading up to these ultimate questions.

There are subordinate questions to be dealt with and which form the basis of your final conclusions. The only item of the plaintiff's original specifications which remain and demand any consideration by you are numbers 2, 14, 19, 21, 23, 24, and 28, and items on the additional specifications. The additional specifications filed by the plaintiff are either corrected under item 23, or with the defendant's specifications in offset. As to the other items of the specifications, a few have been withdrawn by the plaintiff; and we think as to the others that the evidence has disclosed a legal bar to a recovery now in this action. This relieves us of the right or duty to make further inquiry in regard to them. They are in the case for legal consideration of the revisory court, but are to be treated as not in the case for further consideration in this trial.

The defendant's specifications cover the money that he claims to have paid out for and in behalf of the plaintiff, going back over a term of years, and under them and his plea in offset he claims there is a balance due him from the company. These will naturally come up for consideration in connection with the plaintiff's additional specifications and item 23 of the original specifications.

I will take up the first class of items just alluded to and present the issues arising in them. The first is item 2 of the specifications. Without reading it, it is the item which refers to the lease of the Valley Road. The plaintiff claims to recover this item on the ground that its evidence tends to show that in 1865 the defendant Page and Mr. Burchard were the Trustees of the second-mortgage bond-holders of the Rutland and Burlington Railroad, and were in possession and operating the road under an appointment of the Court of Chancery in a suit of foreclosure of one of the mortgages of that company; that at that time they took a lease in their own name of the Vermont Valley Road which runs south from Bellows Falls, the eastern terminus of the Rutland and Burlington Road; that they took the lease for the benefit of the trust estate, and took it in their own names—a supposed legal objection to their engaging in it in the name of the trust; that the Trustees, who were the lessees named in the lease, operated the Valley Road in connection with the Rutland and Burlington Road; that

the machinery of the Valley Road was taken to Rutland, and repaired in the Rutland and Burlington shops, and was put to use by the Trustees, and that they furnished the funds for the operation of the leased road from the funds derived from the operation of both roads, but kept the accounts in such a way as to show the expense put upon the leased road; that in 1867 the second-mortgage holders, having obtained a charter for the purpose, organized the plaintiff company, that is, the Rutland Railroad Company, to be the successors of and take the place of the Rutland and Burlington Railroad Company. It was simply a scheme of reorganization by the second-mortgage bond-holders and those who should join with them to enable the company, or those second-mortgage bond-holders, to meet the demands upon them growing out of the foreclosure of the first mortgage, and to save the property from going on the first mortgage. This organization was effected in 1867, and the plan of salvation carried into execution. That the defendant was prominent in this move and scheme, and was elected a Director and President of the new company at its organization, and continued to hold this office until July 31, 1883, and was the manager of the plaintiff company to the fullest extent that the office which he held imports, and as shown by the records of the company ; that after the reorganization as stated it took some time to carry out the scheme of relief attempted, that is, to raise the funds to pay off the prior indebtedness etc., that until that was done the Trustees of the second-mortgage bond-holders could not close their trust and turn over the property to the legal owners ; that they therefore continued to be Trustees in possession, operating the road under their appointment and deed of trust after the formation of the new company just the same as before; that in this respect no change took place except that the plaintiff company simply took the place of the old Rutland and Burlington Company, and in a certain sense of the second-mortgage bond-holders. This continued until 1871, when a lease of the Rutland Road was made to the Vermont Central or its managers, and the trust was then closed out. That at this time the Trustees Burchard and Page, who were the lessees named in the lease of the Valley Road, assigned that lease to the Rutland Company, and the Rutland Company's right under that lease was included in the lease to the Central; that the Directors of the Rutland Company formally adopted all the expenses of the operation of the Valley Road and property, and upon such adjustment of the expenses and profits of the two roads, viz., the Rutland and the Valley, as was made—that is, the proportion of the expenses and profits which each road bore to the whole—it was found that the Valley road had made a profit of $31,651.40 ; that, in closing out their trust in 1871, the Trustees turned over this money to the corporation, and that it was paid from the treasury of the Company to the lessees under the direction and at the instigation of the defendant, who was the President and Manager of the corporation.

The foregoing statement is a mere summary of what the plaintiff's evidence tends to show ; it is intended only to be sufficient to get your attention to the general facts bearing upon item second of the specifications which the plaintiff's evidence tends to show. Quite likely it is inaccurate in some details, but I think in none affecting the legal rights under this item. I will again right here take occasion to say that you, and not the Court, are the part of this tribunal responsible for the facts; and if we should fall into any error in regard to them, you must not let that error mislead you.

It is upon the facts which plaintiff's evidence tends to show that the plaintiff claims to recover under item second.

This claim is based on the proposition of fact in brief that the Trustees took the lease in their own name as individuals for the benefit of the trust, and to be operated by them in behalf of the trust with trust funds, and with no understanding on the part of the Trustees or the beneficiaries of the trust that the trust was to pay the expense of operation and not have the profits of the leased road, and that the Trustees properly turned these profits over to the plaintiff company, and that the act and fact of the payment of these profits to the lessees from the treasury of the plaintiff company was the act of the defendant, and not the act of the corporation understandingly made.

This in substance is the proposition of fact on which the plaintiff relies.

This proposition of fact if established makes a good case for the plaintiff on this item, and would entitle it to recover unless the case is met hy some one of the grounds of defence.

The defence to this item stands on several grounds, some of fact and some of law. First, that these profits were allowed to the Trustees in their account to the Court in 1871 of their trust matters. The plaintiff denies this. The only evidence upon this point is the account itself as it was rendered the hooks of the Trustees from which that account was made up, and the testimony of the defendant, and of the expert witness, Mr. McNair. It is claimed on the one hand that these witnesses disagree on this point. This is denied on the other hand. You will remember what the witnesses said, and decide whether they agree or differ.

If you should find upon examination of the account and the hooks from which it was made, and the testimony of witnesses, that this item was covered and allowed by the court in that account, it cannot be recovered in this action.

If you should not so find, then the next ground of defence is the claim of the defendant that he and his associate took that lease in good faith for the benefit of the trust with the assent of the beneficiaries of the trust, and that the lessees should have the profits of the lease.

If this was so, it is a good defence. But where such a claim as this is set up, where parties were situated as these were, the courts look with great scrutiny to the tranasction and to the proof in support of the defence.

The taking of the lease by the Trustees as individuals and not in their trust capacity was not an act adverse to the trust, but in its interest; that is, it was a henefit to the trust to control the valley road; but the operation of it in connection with the trust hy the same persons who were the Trustees put them in position of antagonism of interest. That is, their personal interest would he to make the profits of the Valley Road appear as large as possible. They were under the temptation, to use a homely saying, to "feather their own nest" at the expense of the trust. In the division of expenses and profits of the whole business they had one interest as persons, while they represented another as Trustees. But we are not settling here the honesty of their accounts, hut the right to these profits. The question is, which theory as to the original understanding of this transaction was the true one? Was it as the plaintiff claims it or as the defendant claims it? Did the defendant or his associate take this lease with a view to profit to themselves, and was it so understood hy the parties interested in the trust, or was this claim of profit an after-thought?

The plaintiff denies that there is any evidence to show any understanding in the outset as who was to have these profits, if there should be any. If that is so, that ends this claim of the defendant. The fact relied upon by the defendant to show an un-

derstanding in advance was that the beneficiaries of the trust decided that the lease could not, or should not, be taken by the trust, and that it was not so taken in form.

The fact that the lease was a good thing for the plaintiff and its predecessors in interest, even if the defendant should have the profits, would not make a good defence. In other words, the defendant will not be entitled to these profits because the trust was benefited by the control of the Valley Road in its interest. The right stands on the good faith, intent, and understanding of the Trustees with their beneficiaries when the Trustees took the lease. Was it *then* as the defendant claims it *now?*

To determine this you should look carefully at the situation as it then was; the transaction and all its surroundings. See how the roads were operated; how the accounts were kept; from what fund the expenses were paid. Defendant's counsel claim that it was not from the trust funds, and that there is no evidence to show it. The evidence tending to show it, if any, lies in the books of the Trustees. Also, how the lessees were related to the trust; the obligation they assumed in taking the lease; the fact that the defendant had on extra salary from the trust or from the Company as its President on account of the Valley Road, the testimony tending to show that the beneficiaries decided that the lease could not be taken by the trust; all the facts and circumstances established by the evidence. Another ground of defence to this item is the alleged ratification of the transaction as an individual matter by the plaintiff. If the plaintiff ratified the act of the defendant in the appropriation of the profits of the lease to himself and his associates, the legal effect would be the same as though the transaction were entered into originally as the defendant claims it under his previous ground of defence. The claim is that the Company ratified the allowance and payment to the lessees. In order to effect a ratification there must be shown to have been a ratification of all the material facts and circumstances of the transaction.

Such knowledge of the plaintiff is an essential element to constitute a ratification. The defendant could do nothing to make a ratification. He could not as an officer ratify his own act as an individual. Neither could his associate Directors who were interested as individuals in would amount to nothing. Nor would the actions of the Board in which they participated and interference constitute a ratification.

The claim of the defendant is that the act of the Board of Directors at a meeting in January 26, 1871, in appointing the committee to adjust claims between the Rutland and Valley, followed by the action and report of the committee at the meeting of July 25, 1871, tended to show a ratification.

The plaintiff claims that report does not cover the item on profits of the lease, but is limited to the repair item of $63,515.08. If that is so, there would seem to have been no action of the Board on the subject. The report will speak for itself, as it shows on the books of records on page 100. Defendant also relies as an act of ratification on the act of the corporation, as reported in the printed report of 1872, on page 60, being a report of a committee appointed at the annual meeting of the company, January 30, 1872, as appears on the records of the company on page 111. These records you will have, and they speak for themselves; and upon examination of these records you will say whether they show an act of the corporation about this matter tending to show a ratification of the payment of the profits to the defendant understandingly made. Defendant also claims the long acquiescence is an element of ratification. Long acquiescence without objection,

or even silence of the principal, amounts in many cases, to a conclusive presumption of ratification. As this appropriation, or payment of profits, took place in 1871, I should say this long acquiescence ought to be conclusive, if it appeared that the fact of payment was known to the shareholders, and were it not for the fact that the defendant and his associate Burchard, all the while until near the time this suit was brought, continued to he so prominent, one as a Director and the other as President and Manager of this corporation. I think that is sufficient to relieve the acquiescence of necessarily conclusive effect, and to make it a proper question of fact for you to decide, upon all the evidence, whether there has heen in fact a ratification of the payment to the defendant, as to these profits, or not. When a party relies on ratification as a defence, the hurdeu is on him. Keeping in mind, therefore, the limitations I have alluded to upon the Director's power to do an act of ratification, and the principle that, in order for a party to do such an act, it must be done hy the party understandingly and with knowledge of all material facts, and applying this principle to this corporation in respect to the act of ratification relied upon by the defendant, and the length of time intervening hefore this matter was opened hy the company, and the continued relation and attitude of the defendant to the company during this time, and giving all the evidence on this point its due weight, it is for you to say whether ratified or not.

Another claim by defendant to this item made in the defendant's written requests to the Court after the arguments began is that the company voluntarily paid over this money, and there being no claim of fraud or deceit, there can he no recovery upon the common counts in assumpsit.

The proposition of law is sound, that where a party pays money which he is under no legal obligation to pay, with full knowledge of the fact, he cannot recover it back. It is what is known in the law as it is in fact, a voluntary payment, and the party must abide by it.

These payments were made out of the Company's treasury. Were they made hy the Company with full knowledge of the fact? Many of the considerations already alluded to, on the other points of dispute, hear on this point, aud no further presentation of the question seems to he required.

It is further claimed that this item is harrcd hy the statute of limitations. This money was paid to the defendant more than six years before this suit was hrought. Our statute provides that actions of assumpsit founded on a contract shall he commenced within six years after the cause of action accrues. This is an action of assumpsit.

The claim is that under this statute and upon these facts the statute applies. If this question was not settled by decisions of our Supreme Court, the defendant's claim would merit grave consideration. But we have a late decision in a reported cause, which was an action of general assumpsit just as this is, and was by a beneficiary of a trust—a *cestui que* trust, in legal parlance—against the trustee, and where the trustee had had the money for more than six years hefore suit, and the statute of limitations was pleaded as a defence. And in that case the Court said no lapse of time hars a direct trust, and held that the plaintiff could recover. That case makes the law for us, and we cannot disregard it. The law adopted in that case is the rule in equity, and it would seem that our Supreme Court regarded the rulc applicable in action of assumpsit hetween a trustee and *cestui que* trust for money had and received which is applicahle in an action in equity between such parties.

No good reason occurs to me why it should not be so unless the statute has interposed.

In equity as between trustee and *cestui que* trust in the case of an express trust, the statute of limitations has no application, and no length of time is a bar. The relations and privity between trustee and cestui que trust are such that the possession of the one is the possession of the other, and there can be no adverse claim or possession during the continuance of the relation.

But there is one feature of this case on this point that raises a question of fact for you.

It appears that the defendant took the money as a right. His testimony tends to show that he claims it as his own, asserted property in it; did not hold it as a part of his trust, but by virtue of a rightful payment to him by the Company, the *cestui que* trust.

If a trustee repudiates the trust by clear, and unequivocal acts of words, and claims thenceforth to hold the property as his own, not subject to any trust, and such repudiation and claim are brought to the notice or knowledge of the *cestui que* trust in such a manner that he is called upon to assert his equitable rights, the statute will begin to run from the time that such knowledge is brought home to the *cestui que* trust.

But to enable a trustee, without giving up the possession, to turn it into an adverse holding against the *cestui que* trust, the evidence must be clear and unmistakable, and such adverse claim must be brought home to the *cestui que* trust beyond question or doubt. The attitude of the trustee must be hostile, and continuously so; and there must be no mistake or misapprehension as to the character of his holding, by either party. The statute will not begin to run so long as the *cestui que* trust is under the control or influence of the trustee even after the relation of trustee and *cestui que* trust is absolutely ended. These principles of law are elementary, and are found in all the books upon the subject.

Apply them to the evidence of the defendant tending to show that he received the money as a right which he asserts, and that notice of this was brought home to the Company. Was this so beyond question or doubt, without mistake or misapprehension as to the character of his holding by either party, and was the Company free from influence or control of the defendant in respect to his holding of this money?

If you find the facts established according to the requirements of these rules, then the statute of limitations would be a bar. If you do not so find, then the statute is no bar.

If you should find no defence to this item on the grounds stated, then the plaintiff is entitled to recover for so much of these profits as this defendant is responsible for having been diverted from the plaintiff's treasury. He is liable for the share that he himself took in his own behalf—that is, one fifth of the amount specified in item 2, with interest from the date that he took it.

The evidence tends to show that there were five persons who participated in those profits, the defendant being one of them, and the plaintiff claims it is entitled to recover of this defendant all of those profits, although four fifths of them went to other parties, and puts this claim on the ground that the defendant was the plaintiff's agent in charge of its funds, with the right and duty to guard its treasury and the outgoes of money, and that he actively caused or allowed this money to be

wrongfully paid out to the other parties, and, even if not liable for the whole, that he actually took the portion of one of his associates from the treasury and paid it to him, and is liable for that as well as for what he kept himself.

We think that neither of these positions is sound as applicable to this form of action and the facts of this case, and that the plaintiff's testimony does not tend to show a right of recovery beyond what the defendant took and retained as his portion of the profits.

The amount of that as conceded was $6330.28, and was paid to defendant July 26, 1871.

We come next to item 14 of the plaintiff's specifications. This item you will recognize by the term that has been applied to it, as the "Whitney item" or the "Whitney matter." And I do not see as it will be necessary for me to read the item as set forth in the specifications. The basis of this claim is as follows:

That Whitney was a holder of second-mortgage bonds, and when the Trustees of the second-mortgage bond-holders, that is, this defendant and Mr. Burchard, filed their account of their stewardship as Trustees in 1871, Whitney appeared and opposed the acceptance of their account; that thereupon a settlement was got up with him, and he withdrew his opposition, and the accounts were allowed and passed as rendered. The organization of the Rutland Railroad Company was a scheme devised to relieve the second-mortgage bond-holders and the Railroad Company from its financial embarrassment growing out of the decree of foreclosure of the first mortgage. It was in substance a plan of reorganization under a new charter, and the plan was to create two kinds of stock, common and preferred. The idea was to have the second-mortgage bonds exchanged into common stock, and to create and dispose of enough preferred stock to pay off or retire by exchange the first mortgage. In the said arrangement with Whitney he got an advantage over other second-mortgage bond-holders to the extent of 820 shares of preferred stock, instead of common stock, worth less than the preferred stock.

The plaintiff claims and introduced evidence to show, and from which it is argued to you, that this defendant caused that to be paid to Whitney as an inducement and in consideration of his withdrawal of opposition to the Trustees' account, and was solely for the Trustees' benefit and at the instance and request of the defendant when he was President of the plaintiff Company.

In reply the defendant has introduced evidence tending to show that this was done, not at his instance and request and for said purpose, but in this wise: that at that time the first mortgage had been paid off except about $67,000, and the second-mortgage bonds had been retired by exchange into stock except what Whitney had, and perhaps a little besides, and that therefore there was no incumbrance ahead of Whitney's second-mortgage bonds except this $67,000 of first-mortgage bonds, and that this security was therefore good; his bonds were worth par, and that he took advantage of the situation to press his claim to be paid for his second-mortgage bonds, instead of exchanging them into common stock, and that the Directors, through a committee, settled with him the best they could, and that the advantage given to Whitney over other second-mortgage bond-holders was wholly on this account, and not on account of his opposition to the Trustees, accounts, and that the arrangement was made with Whitney without any action or request of the defendant. I do not deem it necessary to go into any detail of that evidence, as that has been presented in argument both ways.

The above is the substance of the respective claims and the respective tendency of the evidence.

If you find the fact to be as the defendant claims it, then there is no ground of recovery.

If you find it as the plaintiff claims it to be, and find that the defendant bought off Whitney's opposition to the Trustees' accounts and took the preferred stock of the Company to do it with, and thereby treated and used that stock as cash for his own benefit, then the law will treat it just as he did. If he had and used that stock in his own behalf as money, treated and used it as such, he is liable for it as such in this action, and liable to the extent that he has not reimbursed the Company therefor. Having returned the common stock in place of the preferred stock, the Company is out the difference in value between the two kinds of stock at that time. It was an appropriation to that extent by the defendant of the Company's stock as money, assuming that you find that this was done by the defendant for the purpose claimed by the plaintiff, and not done by the Directors and as the defendant claims. If the transaction was as the defendant claims it, the fact that the defendant was *incidentally* benefited would not afford ground of recovery. And so if it was as the plaintiff claims, then an incidental benefit to the Company would not defeat the right of recovery. The legal right of the Directors to take up Whitney's bonds with preferred stock existed, taking the facts to be as the defendant's evidence tends to show. This proposition is questioned by the plaintiff's counsel, but I think it is plain on several grounds, which it would be immaterial to state now. The question comes back to one of fact. Which way was this? Did the defendant procure and cause this arrangement to be entered into in his own behalf to buy off or stop Whitney's opposition to the allowance of the Trustees' claims in their behalf, and did he in fact, and in substance and effect, use the preferred stock for the purpose, or was it done on the other ground, on account of the pressure of Whitney to realize par value for his second-mortgage bonds, as the defendant claims? Upon this question you will carefully recall all the evidence, the situation, and all the circumstances; the relation of the defendant to the transaction; his absence from the country; the reason for the committee's action in behalf of the Company as claimed. Apply your best judgment and sound reason to this evidence, regarding the whole of it, and say how the fact was.

The Company itself would have had the right to settle with Whitney in his opposition to the Trustees' accounts; and if the remnant of the second-mortgage bonds in Whitney's hands had become just as good as first-mortgage bonds, by reason of the first-mortgage bonds and the rest of the second-mortgage bonds being paid, retired, or taken up, then the Company could use the preferred stock which it had in hand, instead of money, in dealing with Whitney. The Company then having the right to use the preferred stock, to take up second-mortgage bonds or otherwise, for the benefit of the Company, or what the Company considered to be a benefit, it could ratify such use by the Directors.

I have sufficiently stated the rules as to specifications, and need not refer to them in this connection. As to ratification—applying those rules here, if you should find the Company here ratified this action of the Directors through its committee, then the transaction must stand.

The statute of limitations would also apply to this action on the ground as stated in connection with the Valley lease item; and you will give it the same

consideration in connection with this item as I have already called your attention to it in connection with that item.

We come next to item 19, known as "the Addison stock item."

The claim under this item is for five years' dividends paid by plaintiff on 300 shares of Addison stock, amounting to $4500, and being $900 per year for the five years previous to April, 1883.

It appears that the defendant, while President, sold 300 shares of Addison Railroad stock owned by the plaintiff to a Mr. Hickok. The plaintiff's evidence tends to show that the defendant kept the proceeds of that sale, being $12,000, and did not turn it over to the treasury, or use it in behalf of the Company; also that after he had ceased to be President he obtained and restored that stock to the plaintiff, and that the plaintiff elected to accept the restoration of the stock instead of holding him for the proceeds of the sale. It appears, and is not disputed, that the plaintiff paid the dividends on that stock during the intervening four or five years between its sale to Hickok and the restoration to the Company.

The plaintiff claims that if you should find the facts in accordance with the above tendency of the evidence in connection with the undisputed facts, then the plaintiff is entitled to have a complete restoration, and the defendant should pay or restore the dividends paid by the plaintiff to Hickok.

If the sale was an actual sale to Hickok, and the dividends were paid to him on his own stock and in his own behalf, and the defendant afterwards bought and returned the stock to the plaintiff Company, and that the Company elected to accept it instead of holding the defendant for the proceeds of it in his sale to Hickok, then we hold that the plaintiff would not be entitled to hold the defendant for the dividends paid to Hickok. The defendant's liability would be for the interest on the proceeds during the intervening time between the sale and the return of the stock. The date of the sale was 1878 or '9,—these dates I did not have before me and I cannot be sure that I am correct,—and the date of the return of the stock was as plaintiff claims August 7, 1883, and defendant claims, as I understood him, a little earlier.

But the plaintiff also introduces evidence tending to show that the defendant told the Directors about the time he returned the stock that it had always belonged to the Company. If he said so, it would be substantive evidence tending to show that such was the fact, and that the sale to Hickok was a mere formality. Mr. Haven also testified on this point tending to show the Company owned the stock in fact. If you should find such to be the fact, and that Hickok was not the owner, but simply held the stock in his name, and received the dividends in defendant's behalf and to his benefit, or they were paid to him by the defendant's procurement and request, then the defendant would be liable for them in this action.

Defendant's evidence tends to show that he regularly sold the stock to Hickok and the dividends were paid to him in his own behalf, and that defendant paid the proceeds of the sale to the Company, and that the defendant had no interest in the dividends. If you find the transaction was according to the tendency of this evidence, it makes a good defence.

As to what this transaction in fact was, whether as claimed by one party or the other, you will give due consideration to the testimony of the defendant about it—the testimony tending to show what he said about this stock out of court to the present Directors, the facts and circumstances in respect to his restoration of the

stock, the dual character of his claim that he paid the Company for the stock when he sold it, and afterwards, in the summer of 1883, obtained and restored the stock on his own motion and now claims pay for it and you will give due consideration and weight to all the other facts and circumstances which you find established by the evidence.

We come next to item 21, the Collamore and Simpson suits.

It appears that some time subsequent to 1871, and subsequent to the time that this defendant and Mr. Chase issued a circular statement showing the assets of the plaintiff Company, called "Rutland Railroad Securities," three suits were brought in Boston against the defendant and Chase, and two of them included other Directors as defendants. Two of these suits were in behalf of John and Gilman Collamore, and one in behalf of M. H. Simpson, the latter being against this defendant and Chase only.

These parties had bought stock of the Railroad Company, and the suits were based on alleged misrepresentations in that circular statement in regard to the financial condition of the Company at the time that the parties bought the stock, and the plaintiffs claimed to recover damages they sustained in their purchase of stock in reliance on these alleged misrepresentations. These suits continued along from the time they were brought in about 1874 to about 1881, when they were settled at an expense to the Company of $19,330, less, as the defendant claims, $3383.68—$15946.32. I understand the plaintiff claims the larger sum. But I understand that the evidence is an entry upon the books, which I have not seen, but which will be before you, if you desire to see it, and from which you can judge which of these two claims is the right one as to the amount.

The plaintiff claims that as those suits were not against the Company, but against the Directors individually, this defendant and the other Directors had no right to take the funds of the Company and use it in payment or settlement of their private suits, that if this defendant and the other Directors who were defendants in those suits, were not in fault, had made no misrepresentations which induced the Collamores and Simpson to buy the stock, then there was no valid claim against anybody. If they did misrepresent, it was their own fault and they should pay, and this Company should not be made to suffer.

The plaintiff further claims that whatever fault there was in the premises, it was the fault of the defendant. But whether solely his fault or not, he participated in this wrongful use of the Company funds, and is liable for the whole amount thus paid out. And the plaintiff introduced evidence tending to establish facts that justify its claim.

The defendant claims in respect to this item that Chase was more in fault than he was in respect to any misrepresentations in that circular, and was more interested than the defendant was to have those suits settled; and that to procure a settlement he made concessions in interest on his eight-per-cent bonds amounting to a large sum. The claim is that the concession in interest was upon condition and in consideration of a settlement of the suits, and that the Company by its directors understandingly paid the plaintiff's claim in those suits on account of the advantage of Chase's concessions of interest on bonds and sale of them to the Company.

The defendant introduces evidence tending to support this theory and claim.

The above is a general statement of the respective claims of counsel. But counsel make points under this item which require a more particular statement of claims and the grounds of them.

It appears that when these suits were settled in April, 1881, Judge Prout, who was then a Director, I believe, and counsel of the Company, went to Boston and obtained a contract from Chase to himself, giving the latter an option to take Chase's eight-per-cent bonds at a discount, Chase having a very large amount of them and having brought suits on the coupons here in Vermont. It was provided in this contract that this option to take bonds at the price stipulated should be exercised before May 1st following. This contract so far was reduced to writing. Judge Prout testifies that there was a further contract made on the same occasion, and as part of the same transaction, which was not reduced to writing, and that was that a condition of Chase's sale of his bonds to the Company, at a price named in the contract, was that these Collamores and Simpson suits should be settled and discontinued. Judge Prout immediately assigned this contract to this defendant; and he testified, as I understand him, that he was acting as counsel and in behalf of the defendant, and got that option from Chase for the defendant and not the Company. The defendant's evidence further tends to show that the defendant thereupon informed the Directors at a meeting of the Board just what he had got from Chase, showed the said contract, and stated that part of the consideration was incorporated in the written instrument, to wit, that he was to procure a settlement of those suits, and that he had obtained a settlement of them by taking the stock of the plaintiffs in those suits at par, I think, which they had paid for it, and offering to let the Company have the benefit of his contract with Chase—that is, to take his eight-per-cent bonds at par, with seven per cent instead, of eight per cent for unpaid interest for the time the interest had been unpaid, which was from November 1, 1878—provided they, the Directors, would pay him what it cost to settle with those plaintiffs, which cost was the difference between par and the market valuc of that stock and was $19,330, as the plaintiff says, but which the defendant claims was $15,946.32.

The substance of this all is that the defendant told the Directors what he had done and what he had got, and that the Company would have Chase bonds at just what they cost him, which included their par value and interest at six or seven per cent—the copy of the contract handed to me says six per cent, and the Bryant letter says seven—and the cost of settling said suits.

Chase swears in substance, without going into details, that the settlemeut of the suits was no part of his contract and arrangement with Judge Prout. He says he told the Judge he was not going to settle the suits; that the Judge said, "We can settle them if you will sell your bonds to the Company;" that he told the Judge he was willing to sell the bonds to the Company at the price he paid for them, and he did not wish to make anything out of the Company; and thereupon they made the contract which is in evidence, and which makes no allusion to those suits.

Taking the defendant's evidence to be the truth of this matter, and if you find that the defendant actually was to pay and had to pay just what he claims to get the Chase bonds, and the Company had them on the same terms, then the plaintiff cannot recover this item, even if the transaction resulted in an incidental benefit to the defendant.

There is another ground of defence. If, in the getting of that contract from Chase giving the defendant the option to take his bonds on terms beneficial to the Company, tbe settlement of said suits was no part of the condition or consideration, yet, after he settled those suits, the Board of Directors, acting independently of the defendant, and of the other members of the Board who were defendants in those suits,—I think

there were two such, possibly more, but the book of records which you will have will inform you,—knowing all the facts, understandingly and in good faith took the Chase bonds upon the terms which the defendant offered them, which was to pay the price named in the contract and pay the cost of settlement of said suits, and this was a material benefit to the Company, it was a valid transaction, binding upon the Company.

But if, on the other hand, the defendant obtained the option from Chase without agreeing to settle said suits, without any conditions other than as stated in the written contract, then the Company would have been entitled to have the benefit of it as he got it, if the Company had so insisted. The Company was then engaged in the business of getting in bonds to be stamped down, and it was important and beneficial to do it; therefore it was the duty of the defendant as the President of the Company to procure the stamping down of the interest of the Chase bonds on the best terms possible, wholly independent of any personal advantage to himself.

If you therefore find such to be the fact as to the Chase option or contract, and that the defendant deceived the Board by telling them that the cost of settlement of the suits was a part of the consideration which he had to pay to get the bonds, and thereby procured the Board to reimburse him for that cost, and he thus got the money from his Company, then it was wrongful; the Board did not act understandingly, and the defendant is liable for the amount that he thus obtained. The defendant being the President of the Company and acting with his own Board, was bound to absolute fairness and to make a full disclosure of all the facts.

It was one of those transactions where you should feel your way carefully, and examine the evidence thoroughly and sharply.

Bearing on the issue of fact as to whether the defendant had to obtain a settlement of those suits as a condition of the Chase option, you have the testimony of Mr. Chase and of Judge Prout, and you have the written contract itself, and also the memorandum of Judge Prout on the Bryant letter. Bryant was the attorney of Governor Page in those suits, and his letter is not evidence on this point except as Judge Prout's memorandum on it made it evidence corroborating his testimony on the stand. Bryant did not participate in the contract with Chase. His letter was only a statement of his understanding of it derived from some source which does not appear; and if it did, the letter could not be evidence by him of what the contract was. In order to see how much weight should be given to it as a memorandum corroborating Judge Prout's testimony, you should examine carefully the words and purport of his indorsement thereon.

In addition to the testimony alluded to you will weigh fairly the situation and reason and circumstances which the evidence discloses, and which have been pressed upon you by counsel on both sides.

The amount here involved has been stated above.

But there is one more point of consideration about this item. It is in respect to the effect to be given to the written contract with Chase.

The plaintiff claims that the paper, as it stands, is conclusive as to the extent and scope of the contract, and nothing can be added to it by parol; that therefore the parol testimony tending to show that fact about the Collamore and Simpson suits was inadmissible and cannot be considered as evidence as to what the arrangement between Judge Prout and Chase was.

The defendant claims that this testimony was admissible and may be considered, and that the parol features of the contract on which he relies may be shown.

The rule is that where parties reduce a contract to writing, the written instrument is conclusive betweeu them as to the scope and terms of thc contract, and that it cannot be varied or enlarged by parol.

But there is another rule on the subject which is in the nature of exceptions to the general rule stated, and it is this: Parol evidence will be received in proof of stipulations not included in the writing, where both parties agree that the writing should not contain the whole contract, unless the additional matters are inconsistent with the writing. If this defendant was insisting that those additional matters to the effect that he was to pay more in order to get Chase's bonds than the written contract provides, it would be somewhat of a stubborn question to answer; but I am inclined to think and to hold that the additional feature here claimed is not inconsistent with what was written. If, therefore, you should find that Mr. Chase and Judge Prout then agree that there should be this additional condition or consideration to Chase for his bonds, and also then agree that the writing should not contain that provision, then the writing is not conclusive in this respect.

If you fail to find such agreement, then the writing is conclusive and you should so treat it.

You will therefore pass on the controlling questions first stated in the light of the rules laid down as' to that contract. We next come to the interest item, which the plaintiff claims and has introduced evidence tending to show that the defendant during his agency as President had the use of Company money in his own behalf and is chargeable therefor.

The defence to this item is a denial of the alleged fact that he so used Company money. Plaintiff also claims that if defendant did not use Company money in his private business, he used Company securities as collateral, or by getting them discounted, and is chargeable for that the same as though he used the money of the Company.

If you should find that the defendant actually used Company money in his own business, he is liable for the interest on the amount for the time he so used it. In getting at the amount he so used you are not restricted by the average monthly balances of cash as figured on the books of the Company.

The system of book-keeping, as now explained by the President and Treasurer and the expert accountants, which was early adopted and has been in vogue by this Company and its predecessors for more thau twenty years, was not one that would make any periodical balances of cash a true test of the actual amount of cash on hand at the time of those balances. This system was one by which securities in one form and another were carried and treated as cash, when they were in fact but representatives of cash; the money represented by them was not on hand at the dates the balances were struck. The system was early adopted, and quite likely was a good oue, possibly the best; the only point here is that you should not be misled by it to charge the defendant with more cash in his hands and use than in fact he had, if he had any. I think he denies that he had and used any of the plaintiff's money in his own business, but I believe he does not deny but that he did use some of the plaintiff's paper at the bank to raise money for his own use, but claims that he paid the discounts and restored to the plaintiff these securities, so that the plaintiff was not out anything. His claim in that is that he simply used the credit of the Company without expense or loss to the Company.

If that is so, the plaintiff has no groundof recovery for interest on that account

in this action. This is not an action against the defendant for damages on account of improper administration of the affairs of the Company. It is an action for money had and received by the defendant which in equity and good conscience belongs to the plaintiff.

The use of the Company's credit without loss to the Company took no money from the Company, and left none in defendant's hands to be restored belonging to the Company. There are various other grounds upon which an agent chargeable as trustee may become liable for interest on trust funds, but I have not observed how they apply to this case under the evidence.

The use of the money would deplete the treasury for the time, thereby compelling the Company to pay interest on its debts which it might have paid with the money, or, if the Company had no occasion during the time to use its money for that purpose, preventing it from putting that money at interest until needed. But the use of the Company's credit, whether rightful or wrongful, took no money from the Company's use, did not deplete the treasury. It was an accommodation to the defendant, but left no money in his hands belonging to the plaintiff.

If you should find that there were moneys in the defendant's hands from time to time for which he had no use in behalf of the Company, or, if he had use, did not so use it, and these were times when he was not the appropriate custodian of the money, he would be chargeable with interest for the amount and for the funds of such holding, without showing that he did in fact use it in his own business.

The defendant has also got a claim for interest, for money which the defendant claims he advanced for the use of the Company, and for which he claims to have received no interest.

If the Company had the use of the defendant's money, and has not paid interest for it, he is entitled thereto. Whether this is true or not is for you to say upon the evidence and in view of the defendant's position of President of the Company, attending to and mainly managing all its financial transactions, both as to receipts and disbursements.

Both parties have made up statements of interest as claimed respectively, which you will have.

We come next to item 23, and items treated in connection with it. [Read Specification.] This item specifies five notes in respect to which the plaintiff charges that the defendant wrongfully appropriated the proceeds to his own use, amounting to $44,000. This item is in the original specifications. After they were filed the defendant moved that the plaintiff be ordered to file more full and explicit particulars of its claims. An order was then made to that effect, and an additional list of items was furnished and filed, which you have seen during the trial.

In answer to the plaintiff's declaration the defendant filed a general denial, called the general issue, and notice of special defences, and also filed a declaration in offset in which he claimed the plaintiff was owing him a large amount, and in connection with that filed specifications of his claims in offset.

The plaintiff's declaration and original and additional specifications, and the defendant's plea in offset and his specifications, all point to the same general matter, and the whole has been dealt with in the trial more or less, and perhaps in the main together.

The investigation as to whether the defendant is indebted to the plaintiff would

necessarily involve an investigation as to whether the plaintiff is indebted to the defendant.

I think the parties do not go back of 1878, and in their accounts which they have made up between each other, if I understand them, the indebtedness, whichever way it is, has grown up since that time. They have put in evidence statements of account of certain kinds of transactions for certain purposes running farther back than 1878. And possibly I am in error as to when or during what time the parties claim the indebtedness, if any, either way accrued.

The plaintiff Company introduced evidence tending to show that the plaintiff was not in the active business of running a railroad; that it owned a road and had leased it to another corporation at a specified rental; that its principal business consisted in collecting its rents and raising money for its uses in the sale of stock and securities, and applying its income in discharge of its liabilities, and dividing any surplus that might accumulate among its stockholders; that the defendant was one of its Directors, and was its President, with such authority as its charter and by-laws conferred, and such additional authority and duty as the Directors from time to time conferred on him as shown by their recorded votes; that the Company had a Treasurer, who also kept the books of the Company, and had general charge of the records and papers of the Company; that those books and papers were accessible to the defendant, the same being kept in the railroad office here in Rutland; that the Treasurer rendered accounts annually to the Board of Directors, or stockholders, which were audited by a committee of the Directors· that he also made special reports in addition, from time to time, as called upon by the President or Directors, or any committee of the Directors; that the Board had a Finance Committee, and the defendant was a member of that—I think the chairman—to which large powers were given at times in respect to raising, holding, and expending funds.

The plaintiff's evidence further tends to show that large sums of money, or its equivalent, in the form of drafts, checks, acceptances, etc., things treated as money belonging to the Company, went into the hands of the defendant to he used hy him in his office of trust in behalf of and for the legitimate benefit of the Company in payment of its debts; and that among these securities, the equivalent of money and treated as such, which passed to the defendant's hands for use in the Company's behalf there were certain ones specified in one of the statements of account used by the counsel in argument, which you will have, which the defendant never used in the Company's behalf, and never returned to the Company, and that by giving him credit for everything that he is entitled to there is a large balance of Company funds still in his hands.

The defendant's evidence tends to show that he has not received any of the Company's money or securities, the equivalent of money, which he has not used in behalf of the Company; and that he not only used all the Company's money thus coming into his hands for use for the Company, hut also used in paying debts of the Company a large amount of his own money, and that the Company is now owing him for that sum. The evidence upon which the plaintiff relies to show a halance still in the defendant's hands is the testimony tending to show a settlement between the defendant and Treasurer Haven in 1879 or '80, showing a halance against the defendant of some $13,000, exclusive of the interest then claimed by the Treasurer against the defendant, and for which halance the defendant gives that paper sometimes called a due-bill and sometimes a receipt, the paper stating that he had horrowed

and received from the Treasurer that amount, and that the defendant subsequently paid that balance and took up that receipt.

Also tending to show that the defendant was in the habit more or less of using the Company acceptances, or other funds of the Company, in his own business, keeping no regular account of the same.

Also testimony gleaned from the Company books, bank accounts, memoranda made hy the defendant or Treasurer at the time, checks and other forms of securities, letters, etc., which, with the testimony of witnesses in explanation of them and of the transactions with which they were connected, tended to show what things are properly chargeable to the defendant since the said settlement termed paper A in this trial. Also evidence tending to show what he said to Mr. Russell and Judge Dunton in explanation of certain acceptances, and who had the proceeds of them, etc.

And to meet the claim of the defendant that the Company is owing him, the plaintiff introduced testimony tending to show, in addition to the ahove, that the defendant made reports to the stockholders at the annual meetings of the Company, and especially to the meeting of 1883, containing a financial report of the Company, and therein made no claim of any debt due him from the Company; and as to what he said at the meeting; also what he said to Judge Dunton in the nature of an admission that he was owing Mr. Haven in the spriug of 1883, and what he said to Dr. Mead to the same effect in respect to taking care of the cash of the Company. Also that the defendant voluntarily paid to the Company, by turning into the hank account of the Company, nearly $30,000 within a few days after the change of administration at the election of July 31, 1883. The fact of a deficiency of about $40,000 has not been disputed.

The ahove is hut a statement of the prominent features and kinds or classes of evidence upon which the plaintiff relies.

A great mass of testimony has been put in evidence hy hoth parties hearing on the relations of the President and Treasurer to each other and to the Company, in their private husiness, and in their dealings with the Company, and of the use of Company funds in private business, aud of their own funds in hehalf of the Company, and of their methods of keeping track of such use of the funds, and of the neglect of each to keep a regular account of the same, and of their mutual confidence in and accommodation of each other, and of what they respectively claimed and admitted to each other in respcct to their financial relation to the Company, and of the circumstances that led to a disclosure of the deficiency in cash and overissue of stock, and of all that then took place, and of the outhreak hetween the President and the Treasurer, and of the knowledge and lack of knowledge of the defendant, of the deficiency in cash prior to the Treasurer's resignation, and his knowledge or lack of knowledge of the Treasurer's use of the Company money, and of the Treasurer's paying the bills of the Company from his own funds, and of the defendant's knowledge of the standing of the cash and where it was at different times and generally. Some of this testimony hore one way and some the other. In some instances counsel argued in opposite directions from the same fact. I refer to it merely as a general reminder, simply to aid you possihly to recall what we have been over in the past eight weary weeks.

To meet the testimony of the plaintiffs the defendant introduced testimony tending to show, as before stated, that he had used all the money or its equivalent that he

had had in behalf of the company, and a great deal more being money of his own which the company owes him; that it was known to the Directors or some of them that he had a claim of this kind prior to the meeting of July, 1883, and back to the time of paper A.

Also tending to show that the Treasurer was responsible for the whole of the deficiency and a great deal more besides—in all more than $100,000.

Also tending to show his admission, or statement in the nature of an admission, that the defendant was not responsible for the deficiency.

He also put in evidence a statement of account made up from the Company books and bank accounts and other vouchers, all tending to show that the Treasurer has the deficiency money, and testimony in connection with it tending to show when and where he had it and how he used the money. I refer to what is called "Baldwin's statement."

The claims in regard to this are radically opposite. The defendant claims it is a fair, proper, and conclusive showing of the fact; the plaintiff, that it is arbitrary, fallacious, partial, and misleading—a mere selection of a part only of what the books show, and based on pure assumption of fact.

The statement was explained by the witness who made it, and by counsel in argument, and I think there is no occasion for me to repeat what they have said, and further try to explain the principle on which it is made, or what it contains or omitted to embrace.

For the purpose of showing its alleged worthlessness as a reliable method of proving the alleged fact, the plaintiff followed it by a counter-statement claimed to have been made on the same basis, but with more care and correctness; and also put in other testimony in respect to it.

I can only leave this statement with all the evidence about it where the witnesses and counsel have left it, for you to decide as to its reliability and value as a means of establishing the point intended by it.

As I have said before, the plaintiff's evidence tended to show Company funds in the defendant's hands which he has not used for the Company, but still has. There being a deficiency in the treasury specified in amount, and there being no claim but that this deficiency is in the hands of the Treasurer Haven if not in the defendant's hands, evidence tending to show any money of the Company wrongfully in the possession of the Treasurer and not accounted for by him would tend to show that the defendant has not got it.

If that is shown to your satisfaction, then to that extent this defendant should not be made to answer for it.

The defendant also introduced testimony tending to show that paper A was not a settlement, that it was only a sort of provisional settlement; that the defendant claimed at the time that some items therein were not chargeable to him; and that he gave the memorandum receipt alluded to above, with the understanding with Mr. Haven that these items were to be investigated further, and that was so understood when he paid the receipt. Defendant's counsel also argued that it was a fraudulent statement and claim by Mr. Haven, made to relieve himself from the pressure of his own wrongs.

Plaintiff's counsel do not claim, as they could not properly, that the settlement is conclusive against fraud or mistake, or an understanding that it was not to be final; but they strenuously insist that under the circumstances under which it was made,

the length of time it was held by the defendant before he gave the memorandum receipt for the balance on it against the defendant, and the long time after that before the defendant paid and took up the receipt, and the friendly relations of the parties at that time, the likelihood of their kuowing the facts, and the improbahility of payment of the balance if there was any valid ground of claim that the balance was the other way to a larger amount, and the allowing it to rest not corrected so long—that under these circumstances the plaintiff insists you should find the paper was a true statement of the account at that time between the defendant and the Company, and the settlement was understandingly made and cannot he opened or disturhed.

The defendant's counsel insists that this settlement should not he regarded at all, and rely on the testimony of the defendant himself and on the showing he claims to have made that it was not true, and it did not give him the credits he was entitled to, and included charges he was not liahle for.

The parties have made up respectively other statements from the evidence, including books, bank accounts, etc., purporting to show the amouut of rent received and by whom, and of acceptances the same, and to trace the proceeds, and have followed these with explanatory evidence as to disputed items on those statements. And the defendant claims to have fully accounted for all items claimed against him. And the parties rely upon these statements and the evidence given in connection with them to show which way the halance is, and they have more or less hearing on the question in dispute in reference to statement A. In regard to paper A and the giving of due-bill for the balance appearing to he due thereon, and payment of the same as shown by the testimony. The transaction without further explanation was such as to be *prima facie* evidence of a settlement, and should he so treated hy you, unless you find it was induced hy the fraud, concealment, or misrepresentation of Haven, or contained some mistake, or was intended and understood to he open for future correction; and the hurden is on the defendant to show this.

The defendant also invokes and is entitled to the henefit of the presumption of honesty and fair dealing with the plaintiff's mouey. This is not a conclusive presumption of law, but a mere *prima facie* presumption of fact, that may be overcome by evidence. The general theory of the law is that such a presumption as that should have hut slight if any weight against evidence to the contrary. Ordinarily its more prominent office is in cases where there is no proof to the contrary; then the presumption is sufficient to turn the scale without the necessity of the parties in whose favor it operates resorting to evidence heyond the presumption. It is for you to deal with in connection with the evidence, being careful to give it just enough and not too much consequence.

If you find that paper A must stand as a settlement between the parties, then you will go on from that date and see what the transactions between the plaintiff and defendant have heen since, as shown hy the evidence.

The plaintiff's counsel insist, as I understand it, that the defendant's own account which you will have, since paper A, that is, that part of it suhsequent to paper A, shows that he has a balance in his hands belonging to the plaintiff of $3000. You will look at that and see how the fact is.

In that accouut the defendant charges an item of $12,000 for the Addison stock which he turned into the Company about the close of his office.

The plaintiff insists that this item should be struck from the defendant's account, on the ground that he had never heen charged with that stock; that it was simply a

restoration of what the defendant had taken and had never paid for or been charged with.

The defendant insists that he had paid for it, and that it was paid for, I think, in the item of $12,150 on paper A, and therefore having restored the stock he should have the money back. If you should find that the defendant is not entitled to make the charge against the plaintiff, then the $3000 alluded to, if the claim as to it is correct both as to the fact and the right to so treat it, would be increased to $15,000.

The plaintiff also claims that the provident-institution item of $10,000, which is on the defendant's statement of account, and there made a charge against the Company, is also an improper charge and should be stricken from the debit side of that account.

The defendant claims upon his evidence tending to show the fact that the charge as it stands on his statement is a proper one. Considerable evidence was introduced on both sides as to this transaction.

If you adopt the plaintiff's theory and claim about that item, then it increases his claim against the defendant since paper A to $25,000.

And this is the amount of the deficiency money, as it has been spoken of in this trial, which the plaintiff claims to recover, provided you adopt paper A as correct, and starting from these adopt the defendant's account to be correct as to items since then, except in respect to the two items last alluded to.

But the plaintiff further claims that the true balance in its favor since the paper A is greater than shown in the defendant's statement, even after striking off from his statement the Addison stock item and the provident-institution item, and that the true balance is shown on the plaintiff's statement of account since paper A, which you will have, and that this balance is, I think, $44,370. This does not include the interest item or any of the items I took up before coming to what is called the deficiency item.

Another claim of the plaintiff is that if you do not adopt statement A, and recognize it as a full settlement up to the date of the last charge on it, but treat the account on both sides as open before and during the period and found correct by paper A, as well as since, then the true balance against the defendant is what is shown on the statement of account made up on that basis, and put into the case by the plaintiff, and which you will have. The result of that account is a balance against the defendant of some $58,000, if I remember correctly. I did not have the statement.

The defendant claims, as before stated, that statement A should not be taken as a correct statement, or recognized as a valid settlement; and he has made up a statement of account on the assumption that paper A will not be so treated, and that account brings out a balance against the plaintiff of $43,821.86, with interest to be added, $11,522.89. Thus you have the exact claims, as I understand them, of the respective parties.

A large amount of evidence has been introduced tending to show how the respective parties arrived at these variant results, including the testimony of witnesses and a vast number of books, documents, and papers of different kinds.

Leading up to the ultimate question as to the true balance and which way, and as furnishing the basis of result, there have been almost numberless subordinate issues which counsel have presented and argued at length.

After looking this all over and reflecting upon it carefully, I have come to the conclusion that I should be more likely to lead to confusion in your minds than to aid

you in your decision if I should undertake to go through and give you in substance what the testimony shows the one way and the other as to the numerous items of debit and credit on these statements of account to which I have alluded. It would be a mass of figures and numbers, and names and dates, and explanations and counter-explanations, that would simply weary without profit.

I have stated to you the respective claims, and the general grounds of claims, and called your attention briefly to the claims and kinds of evidence tending to support the respective claims.

I may not have stated the claims as fully in some instances as I might do, and possibly as I ought to, and very likely have omitted to call attention to features of evidence tending to support these claims the one way or the other. It would be very strange in the immensity of this evidence if this were not true. It will, nevertheless, be your duty just the same to regard what is omitted as well as what is stated. While you have been listening to the arguments for a week, I have been largely occupied in revolving and solving legal questions involved in the case. Relying upon your recollection of the evidence as refreshed by the long and careful arguments, you must supplement any omissions of allusion to it that I may have made.

Giving all the evidence its just weight, which way and how much is the balance between these parties? Each claims a balance in his favor. The burden is on the plaintiff to show that the defendant has its money; that there is still in the defendant's hands a portion of the funds unaccounted for which the defendant received while the plaintiff's officer and agent. There is, however, one phase of this case, under the plaintiff's evidence, where this burden would be sufficiently established to sustain a verdict, if the plaintiff simply showed money into the hands of the defendant, and went no further, unless it was satisfactorily accounted for by the defendant, and it is this: The defendant was the executive officer of the Company, and as such was in receipt of the money from other sources than from the Treasurer, and disbursed the same directly to creditors without running it through the treasury. It was his duty to have the Company books show a true account of said transactions, or at least to furnish the Treasurer sufficient memoranda for proper entries by him of such receipts and disbursements. If he neglected this duty and consequently no proper and correct account was kept, and thereby no means are accessible to the Company to trace the disbursements, the burden would be on him as to such funds proved into his hands to show they were disbursed for the Company.

The point is that if you should find that it was the defendant's fault and neglect of duty in his office that the plaintiff has no means of making the proof in respect to a matter which the defendant presumably knows all about, the burden would be on him to account by showing how he used the funds in the Company's behalf, which are proved to be in his hands.

If the defendant was not in fault as claimed, then there is no ground for the application of this principle. He does not claim to have kept any regular account of these matters, but says he furnished the Treasurer sufficient memoranda of transactions to make proper charges and keep the accounts. If so, that was sufficient.

The Treasurer denies it as to some matters.

There is considerable evidence bearing upon the question directly or indirectly.

As to the claim of the defendant under his plea in offset, the burden is on him to show that there is a balance due him.

There are a few special matters to be alluded to as bearing on the issues. Money

shown to have been paid by the defendant to the Treasurer would be a sufficient accounting for it, whether entered on the books of the Company by the Treasurer or not.

But in the case of the rents paid by the Cheshire road, the testimony tends to show, and I do not recall that it was disputed, that the course of business was for the defendant to be the officer of the Company to collect and receive those rents. That being so, if there was any exception to that course of business in some instances, the burden would be on the defendant to show it.

The testimony further tends to show that the entry which Haven made in entering the receipt of the rent on the books should not be regarded as evidence as between the President and Treasurer to show that the Treasurer and not the defendant in fact received the Cheshire rent for the Company.

This has application—or it is so claimed—to one of the items of rent, as I understand it; perhaps more than one. You will readily recall the evidence as to how those rents were paid, and how the account was kept by the Treasurer, and upon what information he made the entries.

As to the payment already alluded to which was made by the defendant to the plaintiff, a day or two after the annual meeting of July 31, 1883, being $29,541.66, the testimony tends to show it was a voluntary payment. If so, the defendant cannot recover it under his declaration in offset. I stated the rule in another connection, pursuant to the defendant's request, in these words:

"Where a party pays money which he is under no legal obligation to pay, with full knowledge of the facts, he cannot recover it back. It is what is known in the law, as it is in fact, a voluntary payment, and the party must abide by it. The request to charge in this connection was made by the plaintiff's counsel."

It is pleasant to find in these eight weeks of vigorous warfare that the opposing counsel have at least found one single proposition of law upon which they agree. This perhaps can be accounted for by the fact that they had not seen each others special requests when they were passed up.

The evidence tends to show the defendant made this payment with full knowledge of the facts. If so, it must stand, and is not a ground of recovery in offset. If not made with such knowledge, it is a proper item upon which to claim recovery.

It is not to be excluded as a payment, and it is in fact credited by the plaintiff. It is simply to be excluded as an item in the defendant's account upon which to base a ground of recovery in offset, if it was a voluntary payment as defined above.

Allusion has been made in argument to the alleged impeachment of some of the witnesses, by showing that they have made different statements on material points out of court from what they testified to on the stand. This is an effective method of impeaching a witness, if made out. Truthful men tell the same story in substance on the same matter on all occasions. If they vary it by reason of some mistake or error in understanding the facts, they can explain how it happened and thereby maintain their claim to be truthful.

This alleged impeachment is claimed to apply to the defendant and to Mr. Haven, and perhaps to some other witnesses whom I do not now recall. There are several contingencies as to testimony tending to show a former statement inconsistent with the statement made in court. Such testimony involves a correct understanding as to what in fact was formerly said, a correct recollection of it by the impeaching witness, and exact restating of it by him in court. If a correct memorandum of the

former statement was made at the time, and the witness testified from that, it greatly strengthens the contingent links.

Keeping in mind the circumstances of the conversation, the probability of a correct understanding of what the party said, the likelihood of misunderstanding him, the same as to correctly remembering it, the explanations of the party on the stand in respect to it, it is for you to say whether and to what extent the impeachment is made out as to any witness; and if made out, to what extent you shall deduct from his credibility as a witness on account of the impeachment. To constitute an impeachment it must be about a material matter in the case, not an immaterial matter.

Testimony has also been introduced, and I think referred to by me in some other connection, tending to show admissions on material points by these same persons. Much that I have said on the subject of impeachment applies to this testimony also.

An admission must be taken as a whole with all of its limitations and qualifications made at the time. What was its exteut and scope as a whole, not as derived from a word or phrase, is the question.

Where a witness who is not a party to the suit is proved to have told a different story out of court from what he has told in court on a material point, the only effect is to impeach him as a witness, to weaken and lessen the weight of his testimony.

The rule is different as to a witness who is a party to the suit. The effect is the same as to him as to a witness who is not a party, and in addition his former statement as proved is substantive evidence tending to show that the fact is as he then stated it. This additional effect does not pertain to a witness who is not a party.

The testimony of every witness is to be weighed in the light of several tests. One is his interest in the subject-matter of the litigation and the result of the suit. This is an important consideration, as experience in court and out of court teaches. We are watchful of the claims of a person who is personally interested in the subject-matter of his claim.

It is easy to see the great interest in the personal advantage to the defendant of the result of this suit. Mr. Haven is not a party, but it is easy to see his large interest in the result.

The stockholders of the railroad who have been witnesses are interested to some extent. Witnesses who are interested may tell the truth and the whole truth just the same as though not interested. The simple point is that the fact of interest of a witness and the extent of it is to be considered in weighing his testimony.

Another test to which witnesses should be subjected is their appearance on the stand. It is regarded as a good test of truthfulness; that is, their apparent honesty, fairness, carefulness, and apparent regard for the truth, readiness to tell what they know so far as asked, yet careful not to be swift and go further; also the consistency of their story. Witnesses are sometimes led into contradictions, or to say more or less than or different from what they intended, by adroitness of examination but this seldom deceives the jury, especially if experienced in the business, and I think you may now well be regarded as men of large experience in the jury-panel.

Applying all these tests to all the witnesses, it is for you to consider all the evidence and decide these issues between the parties. It is a suit that merits your most careful consideration. If you give it that faithful service in the jury-room that you have apparently given the case in the court-room, you will deserve the highest commendation.

It is a case unprecedented in this State in many respects—in the length of trial; in

the amount involved; in the number of issues; in the novelty of questions, both of law and fact; in the persistent, sometimes almost bitter, vigor of the trial; in the apparent thoroughness of the preparation and absolute mastery of the case by the respective counsel; in the terrible strain upon everybody connected with the case; in the good fortune as to health of so large a number of persons for so long a time; and in the expense to the parties and the State. These unprecedented characteristics indicate how important it is that the controversy be ended. Every interest demands that you should agree upon a verdict. You doubtless each have an honest and perhaps strong impression how you shall stand on each of the issues to be decided. That is right. But let each remember that he may be wrong. Let each resolve that he will listen patiently and honestly to any different views of others. Let your discussions be full, frank, and dispassionate. Let each and all resolve to decide every question upon the evidence given in court by sworn witnesses, regardless of all consequences, remembering that you have no other evidence, and that you are trying a case, a controversy between parties, and not trying the parties.

You have a great, difficult, and solemn duty, but I believe you are adequate to it. Give it your best judgment, your best service, in accordance with the terms of your oaths as jurors, and then your verdict will forever meet the approval of your own consciences and should merit the approval of all parties.

VERDICT.

In this cause the jury, on their oath, say that the defendant did not assume and promise in manner and form as the plaintiff in its declaration hath alleged; they therefore find for the plaintiff to recover of the defendant on its said declaration the sum of —— dollars damages.

ROYAL D. KING, *Foreman.*

And the jury on their oath aforesaid further say that the said plaintiff did assume and promise in manner and form as the defendant in his said plea in offset hath alleged; they therefore find for the defendant to recover of the plaintiff on his said plea in offset the sum of one dollar ($1.00).

ROYAL D. KING, *Foreman.*

And the jury on their oath further say that in their general verdict for the plaintiff they have found and included therein as a part thereof under item *two* of the plaintiff's specifications the sum of $——.

That they have found and included in said verdict as aforesaid, under item *fourteen* of said specifications, the sum of $——.

That they have found and included in said verdict as aforesaid, under item *nineteen* of said specifications, the sum of $——.

That they have found and included in said verdict as aforesaid, under item *twenty-one* of said specifications, the sum of $——.

That they have found and included in said verdict as aforesaid, under item *tmenty-four* of said specifications, the sum of $——.

ROYAL D. KING, *Foreman.*

RUTLAND COUNTY CLERK'S OFFICE:

I certify that the foregoing is a true copy of the verdict of the jury in the above cause at the March term of said Court, 1885.

Witness my hand and official seal
this 14th May, 1885.

[SEAL.]

HENRY H. SMITH, *Clerk.*

APPENDIX.

THE following are a few of the more important papers and statements bearing upon the case, including both of the plaintiffs' specifications upon which they claimed to recover, also statement of cash balances, and other statements.

PLAINTIFF'S SPECIFICATIONS.

1. Amount of indebtedness of said Page and one Birchard as lessees of Vermont Valley Railroad to themselves as Trustees of the Rutland and Burlington Railroad (now the Rutland Railroad), and which should have accrued to said Rutland Railroad Co. for repairs of Vermont Valley Railroad. Equipment, etc., attempted to be paid by arbitrary offset on the ground of supposed or alleged benefit accruing to said Rutland Railroad Co. by their operation of said Vermont Valley Railroad..... $63,515 08

2. Amount of alleged credit balance of said lessees of Vermont Valley Railroad transferred to the books of said Rutland Railroad Co. from the books of the said Trustees of said Rutland and Burlington Railroad before the settlement of their accounts as such Trustees, in the Court of Chancery in 1871, and not entering into said settlement and paid by said Rutland Railroad Co..... 31,651 40

3. Amount paid said Trustees by the said Rutland Railroad Co. while said Page was its president, to balance the debit standing to fuel account on their books, $40,968.53, and also $2,680.41. The aggregate of either items of liability of said Trustees paid by said Rutland Railroad Co., and all, viz., $43,648.94, transferred to the said company before said settlement of Trustee accounts..... 43,648 94

4. Amount of same nature, and treated in the same way, to settle Bellows Falls Station account..... ..... 3,062 17

5. Amount of the following accounts belonging to said Trustees, presented together and going to their benefit as good assets in said settlement of their accounts, and as such turned over by them to said Rutland Railroad Co. while said Page was its President, and found to be worthless or fictitious, viz.:

Charter	$158 98	
Robert Allen	129 92	
J. G. Smith, banker	1,519 92	
Pacific Railroad	41 31	
Vermont and Canada Railroad	313 25	
Great Western Railway	1,034 73	
Plattsburg and Montreal	482 88	
Hudson River Military accounts	387 76	
Buffalo, Corry and Pittsburg	135 78	
Conn. and Pass. River Railroad	53 89	
Sundry roads—car-service accounts	1,203 55	
Sutherland Falls freight account	313 33	
Morris Junction	444 02	
		$6,219 38

6. Amount of fictitious items entered as balance of account in account of Bennington and Rutland Railroad, transferred to said Rutland Railroad Co. while said Page was its president, and by it paid.. 1,600 00

7. Amount of loss on Lebanon Springs Bonds, so called, purporting to have been passed by said Trustees as part of their trust property to said Rutland Railroad Co. while said Page was its president for $6,700 and sold for $1,600, wrongfully treated as part of said trust property, and also wrongfully passed to said company at said amount 5,100 00

8. Amount arbitrarily credited said Trustees to liquidate a balance against them on the books of the said Rutland Railroad Co. while said Page was its president..... 1,907 53

9. Amount claimed to be an "over-credit" in the said settlement of Trustee accounts and refunded by the said Rutland Railroad Co. while said Page was its president to said Trustees without farther order of said Court, charged July, 1871..... 27,657 28

10. Amount of interest upon indebtedness of said Trustees, charged March, 1872, to the Rutland Railroad Co. while said Page was its president.... ..... 6,638 59

11. And wrongfully charged to the Rutland Railroad Co. while said Page was its president, in favor of said Trustees, for discount on notes received of the lessees of the Rutland Railroad Co. towards shop-stock, which matters entered into said settlement of Trustee accounts and was their own proper liability..... 3,109 22

12. Amount of interest on trust funds of said Trustees wrongfully devoted to his own use by said Page, while such Trustee, at 9 per cent, with yearly interest..... 75,000 00

13. One half amount received by said Page for salary as such Trustee and as president of said Rutland Railroad Co., from the organization of said company during the time the property was operated by said Trustees..... 16,000 00

14. Amount wrongfully paid James S. Whitney in 1871, whether in preferred stock or cash of the Rutland Railroad Co., or on exchange or surrender by him of second-mortgage bonds of the Rutland and Burlington Railroad Co., to an amount, with interest, of about $82,000, being the difference between said sum and the actual value of the same, and at par of the common stock of said Rutland Railroad Co. at time of exchange or surrender into which stock said bonds were properly convertible, said difference being so paid to secure the withdrawal of said Whitney of opposition to the said Trustees in the said settlement of their accounts in court 75,000 00

15. Profit realized by said Page as an individual out of his trust as president of said Rutland Railroad Co. in the matter of the Smalley mortgage or contract, so called, being funds of said company appropriated to himself in said matter by said Page in his said office as president 100,000 00

16. Amount of seven per-cent equipment bonds of said Rutland Railroad Co., issued under the mortgage dated April 28, 1870, taken by said Page while its president, under subscription for preferred stock of said company taken by him 25,000 00

17. Profit realized by said Page as an individual out of his trust as president of said Rutland Railroad Co. in the matter of the Burlington Steamboat Co., being funds of said Rutland Railroad Co. appropriated to himself in said matter by said Page in his said office as president, and loss in said enterprise charged to said Rutland Railroad Co $112,778 28

18. Amount wrongfully received by said Page as an individual while president of the Rutland Railroad Co. on exchange by him into said company of equipment bonds of said company for its five-per-cent bonds 19,472 49

19. Amount of dividends for five years not received by the Rutland Railroad Co. on 300 shares of Addison Railroad Co. stock once owned by the Rutland Railroad Co., held for some time by J. W. Hickok, paid for by him to said Page while president as aforesaid, as stock purchased by said Rutland Railroad Co., but proceeds of sale never paid over by said Page to said company, which stock was subsequently bought back from said Hickok by said Page, and in August last (1883), unbeknown to said Rutland Railroad Co., restored to said company by means of a transfer thereof on the books of said Addison Co., in lieu of paying over the proceeds received by said Page from said sale, which stock so returned the said Rutland Railroad Co. elects to retain, and claims to recover of said Page the said dividends thereon 4,500 00

20. Amount received by said Page while president of the Rutland Railroad Co. of said company's funds, whether in bonds or in cash, in exchange for the said compauy's dividend scrip on its preferred stock, said scrip being invalid and void in said Page's hands as against said company, and if valid said Page having no right to take from said company more than said scrip cost him or was selling for, it being his duty to retire it for the said company at the lowest figures possible..... 100,000 00

21. Amount going to the benefit of said Page as an individual while he was president of the Rutland Railroad Co. out of said company's funds in the matter of the settlement of the suits of John H. Collamore, Gilman Collamore, and W. H. Simpson against him and others..... 19,330 00

22. Amount of Chas. Page note to said Rutland Railroad Co. guaranteed and assumed by said J. B. Page while president of said company in order not to have it proved against said Chas. Page, and thus held until worthless..... 1,189 97

23. Amount of the proceeds wrongfully appropriated by said Page while president of said Rutland Railroad Co., of its notes or acceptances, as follows:

No. 180, dated July 27, 1882.....	$10,000 00	
181 " "	10,000 00	
182 " "	10,000 00	
185 or 187, dated Aug. 10 and Aug. 1 respectively	10,000 00	
1430, dated Dec. 19, 1879....	4,000 00	
		$44,000 00

24. Amount of interest on funds of Rutland Railroad Co. wrongfully diverted to his own use by said Page while its president at 9 per cent, with yearly interest..... 175,000 00

25. Amount of said Page's check given by him while president of the Rutland Railroad Co. to the credit of said company at the National Bank of Rutland in April, 1883, and afterwards destroyed or withdrawn by him, being an amount of said company's funds in said Page's hands and intrusted to be represented temporarily or otherwise by said check..... 7,000 00

26. Amount of any other payments made by or on behalf of said Trustee either before or after said settlement of their accounts which did not enter into said accounts and which came out of said Rutland Railroad Co..... 50,000 00

27. Amount of any items or matters of profit or appropriations to himself by said Page in his said trust relation out of the Rutland Railroad Co.'s funds in the matter of the payment of the coupons on the first and second mortgage bonds of the Rutland

and Burlington Railroad Co., or in the matter of real-estate account or transactions..... 50,000 00

Interest on all the above items.

RUTLAND RAILROAD COMPANY,
By its Attorneys,
BARRETT & BARRETT.

To PROUT & WALKER, *Attorneys of defendant in said cause:*

Notice is hereby given that at the next term of said Court application will be made by the plaintiff for leave to raise the *ad damnum* in its writ in said cause.

RUTLAND RAILROAD COMPANY,
By its Attorneys,
BARRETT & BARRETT.

PLAINTIFF'S SPECIFICATIONS IN ADDITION TO THOSE ALREADY ON FILE.

1878	May 14	$5,000.00		Apr. 4	5,000.00
1877	Oct. 27	10,000.00		Apr. 8	10,000.00
	July 10	5,000.00		May 15	5,000.00
	July 17	5,000.00		June 5	5,000.00
	Aug. 2	10,000.00		Aug. 2	5,000.00
	Aug. 20	6,000.00		Feb. 23	10,000.00
	Sept. 1	10,000.00		July 22	5,000.00
	Sept. 12	15,000.00		Oct. 8	5,000.00
	Sept. 15	10,000.00		June 19	5,000.00
	Oct. 27	5,000.00		June 26	5,000.00
	Oct. 29	10,000.00		Aug. 2	5,000.00
	Oct. 2	10,000.00		Aug. 10	10,000.00
	Oct. 23	9,000.00		Sept. 10	10,000.00
	Oct. 29	5,000.00		Sept. 21	15,000.00
	Oct. 29	5,000.00		Sept. 24	10,000.00
	Nov. 2	10,000.00		Nov. 6	6,000.00
	Oct. 13	5,000.00		Oct. 22	5,000.00
	Oct. 20	5,000.00		Oct. 29	5,000.00
	Dec. 5	10,000.00	1879	Jan. 13	10,000.00
1878	Mch. 2	5,000.00		Jan. 24	15,000.00
	Mch. 2	5,000.00		Jan. 27	10,000.00
	Feb. 16	5,000.00		Feb. 11	5,000.00
	Feb. 23	5,000.00		Mch. 4	9,000.00
	Apr. 30	10,000.00		Mch. 21	6,000.00
	May 1	12,000.00		Feb. 25	5,000.00
	May 2	5,000.00		Mch. 1	5,000.00

1879	Apr. 12	5,000.00
	June 14	5,000.00
	June 28	5,000.00
	July 4	5,000.00
	Aug. 15	5,000.00
	Aug. 19	10,000.00
	Oct. 2	10,000.00
	Oct. 17	5,000.00
	Aug. 26	5,000.00
	Aug. 16	5,000.00
	Aug. 21	5,000.00
	Aug. 5	10,000.00
	Nov. 6	10,000.00
	Oct. 30	5,000.00
	Nov. 7	5,000.00
	Dec. 18	5,000.00
	Dec. 19	5,000.00
	Dec. 22	10,000.00
1880	Feb. 9	10,000.00
	Feb. 20	5,000.00
	Mch. 2	5,000.00
	Mch. 16	5,000.00
	Apr. 21	5,000.00
	Mch. 25	10,000.00
	June 12	10,000.00
1881	July 30	5,000.00
	Oct. 22	10,000.00
	Apr. 26	10,000.00
	Dec. 19	5,000.00
1882	Feb. 15	20,000.00
	Feb. 25	10,000.00
	Apr. 19	30,000.00
	Apr. 28	20,000.00
	May 25	10,000.00
	July 27	30,000.00
	Aug. 1	10,000.00
	Aug. 30	10,000.00
	Aug. 26	5,000.00
	Aug. 20	5,000.00
	Oct. 23	30,000.00
	Oct. 25	10,000.00
1883	Feb. 7	10,000.00
	Feb. 12	10,000.00
	Feb. 5	10,000.00
	June 22	20,000.00
	July 6	15,000.00
1882	Sept. 30	6,000.00
	Of Francis A. Brooks	4,710.69

1877	Francis A. Brooks	15,000.00
	Aug. 3	25,000.00
	Sept. 7	10,000.00
	June 30	10,000.00
	July 4	15,000.00
	July 28	3,225.61
	Aug. 4	2,435.00
	Sept. 11	10,000.00
	Dec. 20	10,000.00
1878	Jan. 1	15,000.00
1877	Oct. 1	600.00
1878	Feb. 7	1,636.88
	Nov. 25	6,000.00
1877	Aug. 25	6,000.00
	Sept. 25	6,000.00
	Oct. 25	6,000.00
	Dec. 7	4,000.00
	Dec. 22	6,000.00
	Dec. 24	10,000.00
1878	Jan. 4	10,000.00
	Mch. 2	5,000.00
	Mch. 2	5,000.00
	Jan. 17	5,000.00
	Mch. 2	5,000.00
	Jan. 15	15,000.00
	Jan. 18	10,000.00
	Jan. 4	2,600.00
	Feb. 6	25,000.00
	Feb. 13	5,000.00
	Feb. 26	9,000.00
	Mch. 15	15,000.00
	Apr. 5	10,000.00
	Apr. 25	6,000.00
	May 3	10,000.00
	May 7	10,000.00
	May 18	15,000.00
	May 21	10,000.00
	May 11	2,325.00
	June 12	500.00
	June 29	9,000.00
	July 5	15,000.00
	Aug. 2	6,000.00
	July 3	6,000.00
	July 5	5.000.00
1879	Jan. 27	1,717.32
1878	Oct. 24	10,000.00
	Oct. 1	9,000.00
	Nov. 8	10,000.00

1878	Nov. 18	10,000.00
	Oct. 25	16,000.00
	Nov. 9	10,000.00
	Nov. 15	10,000.00
1879	Jan. 4	5,000.00
	Jan. 13	15,000.00
	Jan. 23	9,000.00
	Feb. 11	25,000.00
	Mch. 21	10,000.00
	Mch. 29	10,000.00
	Feb. 26	4,583.33
	Mch. 4	5,000.00
	Mch. 6	5,000.00
	Mch. 18	15,000.00
	Mch. 29	7,000.00
	Apr. 11	10,000.00
	May 2	10,000.00
	May 5	10,000.00
	May 12	10,000.00
	May 20	5,000.00
	May 21	10,000.00
	May 24	10,000.00
	May 27	15,000.00
	May 30	5, 00.00
	May 29	10,000.00
	June 2	10,000.00
	May 31	5,000.00
	June 14	10,000.00
	May 29	10,000.00
	July 21	10,000.00
	July 3	3,500.00
	July 7	14,000.00
	July 9	5,000.00
	July 11	6,000.00
	July 14	10,000.00
	July 21	5,000.00
	July 24	10,000.00
	July 27	15,000.00
	July 29	5,000.00
	July 3	10,000.00
	Nov. 15	5,000.00
	Oct. 30	15,000.00
1880	Jan. 22	10,000.00
	Feb. 6	5,000.00
	Feb. 17	25,000.00
	Mch. 15	5,000.00
	July 23	5,000.00
1881	Apr. 14	145,000.00
1881	Apr. 14	10,000.00
1882	Apr. 28	10,000.00
	July 27	20,000.00
	Aug. 10	10,000.00
	Oct. 25	10,000.00
1883	June 26	5,000.00
	June 26	5,000.00
	Apr. 27	8,000.00
	May 1	12,000.00
1877	July	25,500.00
	Aug	25,500.00
	Sept	25,500.00
	Oct	25,500.00
	Nov	25,500.00
	Dec	25,500.00
1878	Jan	25,500.00
	Feb	25,500.00
	Mch	25,500.00
	Apr	25,500.00
	May	25,500.00
	June	25,500.00
	July	25,500.00
	Aug	25,500.00
	Sept	25,500.00
	Oct	25,500.00
	Nov	25,500.00
	Dec	25,500.00
1879	Jan	25,500.00
	Feb	25,500.00
	Mch	25,500.00
	Apr	25,500.00
	May	25,500.00
	June	5,500.00
	July	45,500.00
	Aug	20,000.00
	Sept	20,000.00
	Oct	20,000.00
	Nov	42,000.00
	Dec	25,500.00
1880	Jan	25,500.00
	Feb	25,500.00
	Mch	25,500.00
	Apr	25,500.00
	May	21,500.00
	June	1,500.00
	July	41,500.00
	Aug	21,500.00
	Sept	21,500.00

1880	Oct.	21,500.00
	Nov.	21,500.00
	Dec.	21,500.00
1881	Jan.	21,500.00
	Feb.	21,500.00
	Mch.	21,500.00
	Apr.	21,500.00
	May.	21,500.00
	June.	21,500.00
	July.	21,500.00
	Aug.	21,500.00
	Sept.	21,500.00
	Oct.	21,500.00
	Nov.	21,500.00
	Dec.	21,500.00
1882	Jan.	21,500.00
	Feb.	21,500.00
	Mch.	21,500.00
	Apr.	21,500.00
	May.	21,500.00
	June.	21,500.00
	Aug.	21,500.00
	Sept.	21,500.00
	Oct.	21,500.00
	Nov	21,500.00
	Dec.	21,500.00
1883	Jan.	21,500.00
	Feb.	21,500.00
	Mch.	21,500.00
	Apr.	21,500.00
	May.	21,500.00
	June.	21,500.00
	July.	21,500.00
1880	June	1,500.00
	Sept.	137,700.00
1880	Sept.	152,950.00
	Sept.	4,372.03
	Nov.	26,450.00
	Nov.	10,000.00
1881	May.	1,250.00
	June.	129,500.00
1879	Apr. 15.	5,002.79
	Jan.	1,000.00
	Mch	1,500.00
	Mch.	1,000.00
1878	Oct. 4.	5,000.00
1879	Mch.	1,000.00
1881	Oct.	5,000.00
1882	Mch.	2,061.50
1880	Jan. 26.	14,000.00
1882	Mch.	13,418.39
	Apr.	15,000.00
	July.	10,000.00
	Jan.	1,500.00
1883	May 1.	8,000.00
	July 7	159.37
1879	June 7.	4,000.00
	Sept.	8,000.00
	Sept.	1,500.00
	Sept.	7,000.00
	Oct.	119.65
	Oct.	25.00
	Oct.	3,500.00
1880	Feb. 5.	3,000.00
1881	Nov.	2,000.00
1880	Oct. 4.	3,000.00
1881	Apr.	25,000.00
	Apr.	8,434.29
	Nov.	2,000.00

Credits to be applied as they may appear or be established.

RUTLAND RAILROAD COMPANY,
By its Attorneys,
BARRETT & BARRETT.

Filed Dec. 24, 1884.

THOS. C. ROBBINS,
Dept. Clerk.

Note.—*Since the trial, it has come out that the experts employed by the Railroad Company made up a statement charging Governor Page the full amount of these additional specifications including the balance of cash as shown by the books at the date of the first item therein, and crediting in offset all sums covered into the Treasury for the benefit of the Company, such as payment of acceptances, bonds, coupons, interest, taxes, salaries and other expenses for which vouchers were found. This statement showed the balance*

upon the wrong side to be of any use in convicting Governor Page, for which purpose it was prepared. It was therefore carefully suppressed and nothing was heard of it during the trial.

AVERAGE MONTHLY BALANCES OF CASH ON HAND.

YEAR.	As stated by Mr. McLaughlin.	As stated by Mr. McNair.	Deduct amount of needs of company, such as coupons, dividends, salaries, and miscellaneous expenses.	Balances available to pay notes, redeem bonds, etc., etc.
1874.....	$215,522 56	*$14,787 51	$21,815 54	*$36,603 05
1875.....	265,795 64	*2,937 55	21,330 91	*24,268 46
1876.....	205,667 05	*11,071 66	21,687 49	*32,759 15
1877.....	126,671 53	16,306 33	20,412 80	*4,106 47
1878.....	96,039 18	46,442 82	18,691 35	27,751 47
1879.....	107,472 09	40,549 67	12,558 55	27,991 12
1880.....	115,833 52	81,750 72	11,391 60	70,359 12
1881.....	86,608 02	43,711 88	21,407 92	22,303 96
1882.....	47,516 81	44,726 77	22,032 62	22,694 15
1883.....	22,400 27	18,660 93	14,685 22	3,965 71
Averages.....	$134,559 30	$27,721 30	.....	$8,139 83

* Represent credit balances or overdrafts of cash.

The first column shows the average monthly balances for the year as made up by Mr. McLaughlin, which he testified were the balances as shown by the journal of the railroad company.

The second column shows the average monthly balances for the same periods as made up by Mr. McNair, after a redistribution of receipts and disbursements in accordance with the ACTUAL DATES of the respective transactions. Mr. McLaughlin's figures are simply those as shown by the face of the books, while Mr. McNair's are a restatement of the same items by actual dates—each resulting in the same balance at the end of the period, July 1, 1883, within one dollar, which difference was an error discovered by Col. McNair in the footing of one of the requisitions.

The third column shows the average monthly needs of the company; and as the balances shown in the second column were the balances on hand at the beginning of each month, in order to ascertain the amount available at any time during the month for other purposes, these monthly needs should be deducted, which would give the results shown in the last column.

The last column contains the average balances available at any time during the month for general purposes of the company, such as for payment of its notes, redemption of its bonds, interest on floating debt, etc.

The average monthly balance of cash for the whole period as shown by Mr. McLaughlin's report is $134,559.30, while the *actual* balance as per Mr. McNair's figures is only $27,721.30, and the real average net balance available during any month was only $8,139.83.

NOTE.—This statement commences January 1, 1874, when the journal showed only $15,193.03 on hand.

STATEMENT OF THE NOTES OR ACCEPTANCES OF THE COMPANY CREDITED BY THE TREASURER ON HIS BOOKS AS PAID IN THE MONTHS OF JUNE OF THE RESPECTIVE FISCAL YEARS WHICH WERE NOT *ACTUALLY* PAID UNTIL LATER, WHEREBY HE WAS ENABLED TO CONCEAL HIS DEFICIENCY FROM THE AUDITORS WHEN MAKING THEIR ANNUAL EXAMINATION.

June, 1876.	5	acceptances	amounting to	$41,129
" 1877.	4	"	"	40,314
" 1878.	7	"	"	41,000
" 1879.	2	"	"	22,000
" 1880.	12	"	"	70,000
" 1881.	5	"	"	40,000

All of the above were *neither* due nor paid until the months of July and August.

It will be noticed that in June, 1879, the "set-back" notes (as these were termed during the trial) drop to $22,000. The reason is this: the Treasurer makes the entry of $19,472.49, which is proven by the witnesses to be false. This fraudulent entry, made on his cash-book as cash expended, while in reality there was no cash expended, added to the $22,000 "set-back," brings the amount of cash then covered up to the usual amount of about $40,000.

In June, 1880, the amount of "set-backs" runs up to $70,000. This increase became necessary from the fact that in 1880 the Treasurer used funds of the corporation amounting to over $72,000, which must be covered in some way before the auditors' coming, and this is the manner in which it was done.

Now mark how startling and conclusive are these figures. During the six above-named years the Treasurer covers up each June just before the auditors' examination between $40,000 and $41,000; and how wonderfully clear is the reason for this, when at the time of his resignation there is discovered a deficiency in his cash amounting to a little over $40,000!

THE BALDWIN STATEMENT.

Total amount of Railroad Company's checks drawn by Mr. Haven for his own personal use		$251,357 27
Amount of Rents (received from Central Vt. R. R. Co.) diverted to his own use		34,125 00
Amount of Rents (received from sundry services)		9,516 03
Other funds of Rutland Railroad Company taken by Mr. Haven, including acceptances and bonds		32,777 69
Dividends on overissued Stock		6,831 00
Total Dr.		$334,606 99
Less		
Salary	$27,500 00	
Deposits of his own funds to the Railroad Company's credit	122,730 90	
Railroad Company's bills paid by him personally, including acceptances and coupons	71,395 95	
Total Cr.		221,626 85
Total Deficiency		$112,980 14

The foregoing in a condensed form is a copy of the statement compiled by me from the books, papers, memoranda, etc., in the Rutland Railroad Company's office, and depositions of certain bankers filed in evidence in the case of the Rutland Railroad Company *v.* John B. Page, and is correct to the best of my knowledge and belief. LE ROY W. BALDWIN.

NOTE.—Mr. Haven's salary as Treasurer is credited to him for the whole period, as it was not drawn by him in any regular amounts or periods, but allowed to lie to apply on his drafts out of the treasury.

The Baldwin statement condensed as above is a statement showing the state of affairs existing between the Rutland Railroad Company and its late Treasurer, Joel M. Haven.

This statement commences January 1, 1874, and extends up to the time of the Treasurer's resignation in April, 1883, and shows Mr. Haven's indebtedness to the Rutland Railroad Company.

The theory and basis upon which this statement was compiled was to charge Mr. Haven with all Rutland Railroad Company checks which he had drawn as Treasurer on their bank accounts, and which he had used for *his own personal purposes*; also to charge him with all the Railroad Company's moneys received by him, but which he had diverted to his own use and not covered into the treasury of the Company.

(For example, the evidence shows that from August, 1880, up to March, 1883, Mr. Haven took and deposited in his own private bank accounts $34,125 of rent-money received from the Central Vermont Railway.)

And also to charge him with all acceptances and securities of the Railroad Company taken by himself, but which he never paid for.

These constitute the debit of the statement.

On the other hand, to credit him with all deposits of his own funds to credit of the Railroad Company; to credit him with his salary for the same period; and to also credit him with all liabilities of the Railroad Company paid by himself.

In the preparation of this statement, all the checks, acceptances, books and papers, etc., in the Railroad Company's office were carefully examined.

First, to ascertain what checks were properly chargeable to Mr. Haven.

From all the checks drawn by the Rutland Railroad Company or J. M. Haven, Treasurer, were eliminated all that were drawn for railroad purposes.

The railroad purposes or needs may be divided into eight classes, which was Mr. Baldwin's method, as he testified, viz.:

1. Payment of acceptances.
2. Discount or interest on acceptances.
3. Dividend checks.
4. Coupons.
5. Vouchers in requisitions.
6. Sundry interest charges.
7. Balances due on exchanges of bonds.
8. Transfer of funds from one bank account to another.

After eliminating all checks drawn for the above-named purposes, which comprise all railroad business, as admitted by Mr. Haven on the stand, there was a large

residuum left, for which there were no vouchers and which were drawn for his own use.

In this process of elimination all doubts were resolved in Mr. Haven's favor, and only those checks for which there was no possible accounting were charged to him.

On the other side, as to credits, we gave him credit for all deposits in the Railroad Company's bank accounts which could not be ascertained to be railroad money. We also credited him with his salary from June, 1873.

We then gave him credit for all bills paid of the Railroad Company (bills in requisitions) which were not paid by the Railroad Company or otherwise settled by them, and also credited him with the acceptances paid by him individually.

The Railroad Company showed by their witness, Mr. Haven, that he had paid with his *own* funds three acceptances of the Railroad Company, amounting to $25,000, the payment of which he had never before claimed. This item, with a few other items, reduced the statement from $139,286.03, as first rendered by Mr. Baldwin, to the amount as it now stands, $112,980.14.

This $25,000 of, as they claimed, *his own* funds was realized from the sale by him of *overissued* stock of the Rutland Railroad Company.

This deficiency of		$112,980.14
is accounted for as follows:		
Shortage as shown by the Railroad Company's books	$42,913 36	
False entry by the Treasurer on his cash-journal in June, 1879	19,472 49	
Other false entries and entries not made	6,414 01	
Amount claimed by J. B. Page	43,821 86	
		$112,621 82
A difference of only		$358 32

Note.—*It appears that Mr. McLaughlin, expert, employed by the Railroad Company, made up a statement with the aid of Mr. Haven of the same purport as the foregoing statement by Mr. Baldwin, covering the period from July, 1877, while Mr. Baldwin's extended from January, 1874; the result of Mr. McLaughlin's statement being that all the deficiency as shown by the books of the Company was accounted for, and shown to have been appropriated by Mr. Haven for his personal benefit.*

In the trial, this statement of Mr. McLaughlin was suppressed by the Railroad Company's managers and a strong effort made to discredit Mr. Baldwin's statement. This is perhaps a good illustration of their fairness and desire to bring out the TRUTH.

SCRIP, PREFERRED AND COMMON STOCK, AND OTHER SECURITIES BOUGHT BY J. M. HAVEN (AS PER DEPOSITIONS USED IN EVIDENCE) COVERING PERIOD FROM JANUARY 1, 1874, TO MAY 1, 1883.

Scrip (with interest)	$74,641
$68,722.50 of which was bought in years 1874, 1875, and 1876.	
Preferred Stock, shares	10,247
8771 shares of which were bought in years 1880 and 1881.	
Common Stock, shares	4,947
3575 shares of which were bought in years 1880 and 1881.	
Bonds	$13,200
Amount paid for above, nearly all of which was paid from funds of the Rutland Railroad Company	$349,515.75

There was sold by J. M. Haven, as appears from same sources, 10,871 shares of preferred stock in the years 1876, 1879, 1880, and 1881 for $334,037.18, a portion of which was returned to the Treasurer.

The foregoing statement was compiled by me from depositions filed in evidence in the case of the Rutland Railroad Company *v.* John B. Page, and is true to the best of my knowledge and belief.

June 15, 1885. WILLIS VAN TINE.

PROFITS MADE IN OPERATING RUTLAND AND BURLINGTON RAILROAD, UNDER THE TRUSTEES, INVESTED IN IMPROVEMENTS, BUILDINGS, ROLLING STOCK, ETC.

Upon examining the books of the Trustees of the Rutland and Burlington Railroad it was developed that all betterments to track or buildings, or investments in rolling stock, etc., *were charged as expenses and carried into the income account as a debit to that account as against the earnings credited thereto;* and while the Trustees of necessity had to pay for such betterments and investments out of the earnings, yet there should have been separate accounts kept of them, so that they should stand out clearly on the books and balance-sheets as assets of the corporation, and not buried and wiped out, leaving them without representation of record, and yet intact as valuable assets.

Besides, the balance pro or con on the income account should have shown the net result of the management of the Trustees during their stewardship, and would have done so had expenses of operating on the one hand and earnings on the other only entered into the account. *In fact a large profit was made by the Trustees in the operation of the road* during their term, from September 1, 1863, to June 16, 1871, which will be shown hereafter, but which was covered up by the system of bookkeeping mentioned above.

Attention is especially called to the following figures, as sustaining the above remarks, viz.:

STATEMENT OF AMOUNTS CHARGED TO REPAIRS AND RENEWALS AND CARRIED INTO INCOME ACCOUNT ON THE TRUSTEES' BOOKS FROM SEPTEMBER 1, 1863, to June 16, 1871—7 YEARS 9½ MONTHS.

Repairs of Railroad		$892,868 94
" " Bridges		104,148 63
" " Masonry		30,050 49
" " Locomotives		678,368 48
" " Passenger Cars		186,430 15
" " Freight Cars		603,418 40
" " Stations		379,672 31
" " Fences		35,729 63
Tie Renewals		144,465 08
Rail "		453,463 13
Total		$3,508,615 24

During the years ended August 31, 1862, and August 31, 1863,—the years immediately preceding the above,—the charges to the same accounts as the foregoing were respectively as follows:

Year ended August 31, 1862	$131,254 16	
Year ended August 31, 1863	166,617 05	
Total	$297,871 21	
Or an average per year of	148,935 60	
On this basis the expenses for 7 years 9½ months would have been		1,160,456 55
Which deducted leaves		$2,348,158 69

above the average, applicable to investments, betterments, etc.

To this sum must be added betterments and investments stated otherwise than in the repair and renewal accounts, viz.:

Land Damages	$355 75	
Store-house	4,466 42	
Round-house	35,954 86	
Rutland Car Shop	18,057 81	
Lake House	5,547 72	
South Wharf	11,390 35	
Sleeping Cars	18,948 54	
Tools and Machinery	1,896 00	
Real Estate	500 00	
		97,117 45
Which makes		$2,445,276 14

as an apparent profit invested in assets of the corporation.

In this connection it may be said that the increased earnings from September 1, 1863, forward, would cause increased working expenses. This does not follow necessarily, but depends on the cause of the increased earnings and the preceding conditions of the traffic, rolling stock, and roadway.

If the increase is caused by an increase in rates ; by running cars loaded instead of partially so, whether passenger or freight ; by running full both ways instead of only one; or by a combination of these conditions, whereby the rolling stock would

be worked to its maximum capacity at maximum rates, then little or no increase in expenses would he necessary, and possihly a decrease if rigid economy were practised, or heavy expenditures had preceded on account of track or rolling stock, or hoth.

Roads are frequently (I might say usually) leased at 35 per cent of their gross earnings.

Upon this basis the result of the Trustees' management from September 1, 1863, to December 31, 1870, would have been as follows, viz.:

Gross Earnings	$5,856,266.72
Working Expenses, 65 per cent	3,806,573.37
Leaving (35 per cent)	$2,049,693.35

applicahle to improvements, etc.

It has been demonstrated, however, that under fair conditions and with the exercise of due economy a road can be run for 60 per cent of its gross earnings (some are run for much less). Taking this percentage.as a basis, we would have the following figures for the period named, viz.:

Gross Earnings	$5,856,266.72
Working Expenses, 60 per cent	3,513,760.03
Leaving (40 per cent)	$2,342,506.69

applicahle to betterments, etc. Which approximates to the amount shown ahove, as applicable to such, hy deducting average expenses for repairs, etc., hased on those of the fiscal years 1862 and 1863, from thc total expenditures for repairs and renewals during the Trustee period.

The final balance of thc income account was $246,378.55 (debit), representing an apparent loss in tlie operation of the road hy the Trustees; hut light seemed to break on the hookkeeper to some extent at this juncture, and he credited the income account with the above account and charged equipment account, therehy evening up the earnings and expenses, and in effect saying there was neither profit nor loss, and that he had taken out of expenses $246,378.55 which had heen invested in equipment and heretofore erroneously charged to expenses, and placed it on the hooks as an asset representing value in possession of the Trustees.

This was well enough as far as it went, hut he should have gone farther and *ascertained exactly the amount invested in betterments, real estate, rolling stock, tools, machinery, etc.*, during the Trustees' term of office, and credited the sums so ascertained to income account (thus cancelling the improper charges to expenses), and *charged them to the respective accounts to which they naturally belonged, where they would have represented valid assets.*

A separate account should also have been kept of tlie extraordinary expenses cause hy the great wash-out in 1869; and while it should have been ultimately charged to income account, yet until the final entry was made showing the total expense, it should not have heen charged off, in justice to tlie Trustees' management, who *should have been enabled to show by the books the result of their management under ordinary circumstances at any time.*

At the time the Rutland Railroad was leased to the Central Vermont Railroad

there was an inventory and appraisal had of the rolling stock, tools, machinery, furniture, and fixtures, amounting to..... ..... $963,813 24

Of which there was paid by the Rutland R. R. Co.....	$340,500 08	
Credited Trustees by Rutland R. R. Co.....$246,378 55		
Less "Queen City" sold..... 5,000 00—	241,378 55	
		$581,878 63

Leaving $381,934 61

which was not credited to the Trustees, or paid to them, nor was it claimed, but turned over to the Rutland Company, their natural heir.

The total amount of the inventory, in which the foregoing is included, was $2,056,673.47, and represented the value of the property exclusive of the road-bed, right of way, franchise, etc., and has not proper representation on the books of the Rutland Railroad Company unless a recent adjustment thereof has been made.

It must be borne in mind that this inventory was at an appraised value at the date of the lease in 1871, while in fact many of the purchases made during the flush times just succeeding the war were at much higher prices; for example, in 1865 four locomotives were purchased at a cost of $101,656.

EQUIPMENT BEFORE AND AT THE CLOSE OF THE TRUST.

	Inventory 1862.	Inventory 1870.
Locomotives.....	26	35
Passenger Cars.	18	24
Baggage "	5	7
Mail "	2	4
Freight "	541	1019

During the Trustee period, of the twenty-six locomotives on hand in 1862, nine were broken up and eighteen new or rebuilt placed on the track.

I hereby certify that the foregoing statements, based on the books and reports of the Trustees of the Rutland and Burlington Railroad and the Rutland Railroad Company, are correct.

S. Y. McNAIR, *Accountant.*

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APPENDIX.